II-III

LOCAL INSTITUTIONS

OF

VIRGINIA

"Virginia en dat quintam."—*Old Seal.*

"*Virginia:* which is the most antient and loyal, the most plentiful and flourishing, the most extensive and beneficial Colony belonging to the Crown of *Great Britain*, upon which it is most dependent. . . . . *Virginia* is esteemed one of the most valuable Gems in the Crown of *Great Britain*."—*Jones: Present State of Va., p.* 47.

"The manners of Virginia and Maryland exerted the greatest influence on manners and upon the development of personal, social, and political freedom in the South, and may be considered as patterns after which those of the other Southern colonies followed."—*E. G. Scott: The Development of Constitutional Liberty, p.* 125.

"The possession of land was, even whilst the idea of nationality was mainly a personal one, the badge, if not the basis, of all political and constitutional rights. On it depended, when the personal idea yielded to the territorial, the rights and obligations, the rank, value, and credibility of the member of the body politic."—*Stubbs: Constitutional History of England, I.* 74.

"If *New England* be called a Receptacle of Dissenters and an *Amsterdam* of Religion, *Pennsylvania*, the Nursery of Quakers, *Maryland*, the Retirement of *Roman* Catholics, *North Carolina*, the Refuge of Runaways, and *South Carolina*, the Delight of Buccaneers and Pirates, Virginia may be justly esteemed the happy Retreat of *true Britons* and *true Churchmen* for the most part."—*Jones: Present State of Va., p.* 48.

"There are other places at which, like some of the foregoing, the *laws* have said there shall be towns; but *nature* has said there shall not."—*Jefferson: Notes on Virginia, p.* 147.

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HERBERT B. ADAMS, Editor

History is past Politics and Politics present History — *Freeman*

THIRD SERIES

II-III

LOCAL INSTITUTIONS
OF
VIRGINIA

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I.

VIRGINIA AND VIRGINIANS.[1]

By reason of the comparative inaccessibility or scarcity of authoritative material the history of the Southern colonies has never been thoroughly understood. This is especially the case in regard to local institutions, the study of which has been either entirely neglected or carried on incidentally, so

[1] The history of the colony of Virginia and of the people of Virginia has been told by eminent writers. Its institutions, which lie at the bottom of its history, have been studied only casually, and this paper, therefore, has been written with the endeavor to fill up an existing gap, but the writer being a Marylander has been obliged to base his conclusions upon statements of Virginia authors, both before and since the revolution. The materials have been found in the libraries of the Peabody Institute, the Maryland Historical Society, and the Johns Hopkins University, and the information thence derived has been augmented through the courtesy and kindness of R. A. Brock, Esq., Secretary of the Virginia Historical Society, J. Barron Hope, Esq., editor of "The Landmark," Norfolk, Va., Hon. William Lamb, Mayor of Norfolk, and other Virginians. Most of the facts in the opening chapter have been brought out before in one way or another, but by a brief resumé and fresh arrangement it is hoped that they may be recalled, and may serve to explain certain features in the political life of Virginia and other Southern States. Great help in the study of Virginia sociology has been derived from the writings of H. A. Washington, Esq., and E. G. Scott, Esq. As this monograph treats of institutions, it has been thought best not to discuss, except incidentally, such subjects as the Governor, the Council, the customs system, relations with Indians, finances, &c., which properly belong to the field of institutions. There is no index, for matters relating to particular subjects have been grouped in particular chapters. Overlapping, however, has been necessary, though repetition has been avoided whenever it was possible to do so.

that a general impression prevails that there were no forms of local government in the South corresponding to those of New England, New York, Pennsylvania and elsewhere. It would have been very remarkable, if men coming from the same land should not have been influenced, in some degree at least, by the same instincts to establish similar institutions, and Mr. John Esten Cooke recognized that fact when he made his history of Virginia a history of Virginians, although the character of his work would not permit any extensive treatment of the subject of institutions. As the results of careful delving for over two years, the following pages are offered as an attempt to explain Virginia society at the commencement of hostilities against England and to show that the desire for local government and the growth of a spirit of liberty are not always dependent upon close settlement and the town meeting. These facts must be borne in mind; local self-government is conceded to be conducive to a liberty-loving spirit; the attempt to crush English liberties was resisted as strongly by Virginians as by New Englanders, and Massachusetts and Virginia, commanded by a Virginian, fought shoulder to shoulder, though, their institutions being different to all appearances, it might have been supposed that their respective politics would differ.

The underlying principle of history is that climate, natural environment, and habits of life exercise the greatest amount of influence in moulding men's minds, and, consequently, in determining what shall be the nature of the government evolved by any people. The first thing, therefore, to be studied is the topography of Virginia. The surface of the country, rising by several distinct stages from the Chesapeake Bay to the Appalachian system of mountains, was well wooded with pines, oaks, chestnuts, &c., and its forests were the homes of many kinds of animals of the chase and varieties of game birds. The so-called tidewater, or lowest section, was divided into many necks or peninsulas by wide branches of the bay and their tributaries. One of these rivers, the

James, seems to have burst forth from the great lake, which is supposed to have once covered the Shenandoah Valley, while that beautiful country, once rolling prairies, now dotted with farms and woods, was drained by the Shenandoah river, which found an outlet into the Cohongoruton, the present Potomac, by the huge rift in the mountains at the present Harper's Ferry. The river system of Virginia was a great, if not the most important, factor in determining the character of Virginia society, as it is proposed to show in the course of this monograph.

Proximity to the ocean, low lands terminating along the rivers in marshes, high plateaus, a diversity of mountain ranges and rolling country, all these features would indicate a land suited to the dispositions of many peoples. The same aspects of nature would be likely to insure variety of climates. The situation of Virginia was between the medium cold and the medium warm lands. It was subject, therefore, to sudden changes, either warm or cold, but of short duration, and along the bay shores the moisture of the air, while it tempered the heats of summer, made the winter's cold more penetrating. The soil of Virginia, from the marly deposits of the lowlands, to the rich loams of the Piedmont, the warm earth of the mountains, and the limestone land of the Valley, with its bottom lands formed in the bends of its many streams, rendered the country fit for many kinds of cultivation and for stock raising.

It would be interesting to consider briefly the geological features, but the surface of the country had much greater effect upon the people than did the neglected mineral riches, which in the last few years have begun to be realized. This was, with few exceptions, the land to which came in 1607 the mere handful of men prepared, as regards English enterprise, but not fully equipped with goods, to found a new nation.

The author of the "Norman Conquest," who delights in finding similarities between English and American institutions, has said, "If you wish to see Old England, you must go to

New England." With equal truth it may be said, "If you wish to see Old England, you must go to Old Virginia." Freeman evidently meant by his characteristic sentence that the institutions of New England conformed to those of the land of the English, before they had been softened down and centralized by the Norman conquest, which was so efficacious in making England what it is to-day. But in Virginia, before the American Revolution, one sees mirrored the England of the sixteenth, seventeeth, and eighteenth centuries. The Virginians, engaged in directing the affairs of the infant colony, in planting, or in warding off attacks by savage foes, turned their thoughts away from the semi-wilderness, and looked with deep affection towards their birth-land across the Atlantic, and, notwithstanding Puritan coercion during the Commonwealth, remained at heart staunch loyalists, until royalty had disgraced itself. Who were those colonists, those transplanted Englishmen, what their customs and feelings? First, the gay and dissolute "gentlemen" who went to Virginia with the expectation of becoming wealthy by little exertion, the loose characters who gave Smith and Dale so much trouble, and who preferred to squander their time playing bowls, or sitting idly in the market place. Smith set them to work chopping wood and adopted rigorous means for keeping the peace, for as Stith recounts—"the axes often blistering their tender fingers, they would, at every third stroke, drown the Echo with a loud Volley of Oaths; To remedy which Sin the President ordered every Man's Oath to be numbered and at Night, for every Oath, to have a can of water poured down his Sleeve, which so washed and drenched the Offender that in a Short time an Oath was not heard in a Week."[1] But such persons left comparatively little impress upon the colony. As prospects brightened, people arrived who possessed the means to carry on extensive planting, and who were determined to stay. The civil discord in England

[1] Stith: History of the Discovery of Virginia, p. 80.

was probably the cause of some with cavalier blood in their veins emigrating to the colony. Some few followers of Cromwell came into Virginia after the Restoration and many adherents of the "Pretender," when their hopes were baffled, found a congenial refuge in the fourth estate. Those Englishmen gave the stamp to the institutions, which were afterwards assimilated by the French Huguenots, who settled at Manican town, the Germans at Germanna, the thrifty and keen Scotch, the hardy Irish, and the plodding Pennsylvania Germans, who settled the Valley. The society resulting from the combination of such elements was divided into two classes of which the upper and ruling class was composed of planters, merchants, professional men, &c. Below them were the indented servants, some of whom were convicts, and some of whom had bound themselves for a term of years to defray the expenses of their transportation. The worst of these characters met with the punishment they had deserved, or escaped to England, or formed the nucleus of the shiftless class, known as poor whites. The facilities for taking up land and the provision made for servants, who had served their term, enabled the better disposed, whose sole crime had perhaps been poverty, to obtain a fair start and a chance of equalling in wealth, if not in position, their more fortunate neighbors. Circumstances, such as these, prevented the existence of a strong middle class between slaves and landholders, and produced a tendency for the two extreme classes to separate more and more from each other.

If the Dutch, who were the uncompromising enemies of the English, had wished to dwarf certain English characteristics, they could have devised no means of accomplishing their purpose more potent than the introduction of negro slavery among them. For the first twenty years after slaves were brought into Virginia they increased in number very slightly, but at last became of very considerable importance, and a disturbing feature of Virginia life. Bought and sold as chattels, bound to the soil, looking to their owners as

supreme, slaves were objects of pity; and labor, being almost entirely in their hands, was despised. In some cases great cruelty was inflicted upon these unfortunate beings, whose greatest ill was their lack of personal liberty. This was especially the case, if they were left to the entire control of overseers, or became restless, for Virginians were in constant dread of concerted attacks by their Helots. But it was to the owner's interest, to say the least, for his property to be well preserved and productive, and consequently for his slaves to be free from maltreatment or injury. One other character remains to be mentioned—the Indian, who disappeared leaving a trail of fire and blood, but making no impression upon the character of the colonists save in regard to their language which he enriched with soft-sounding words. The most pathetic spectacle in history, next to the sudden turning of the electric glare of the nineteenth century upon the benighted negro slave, is that of the Indian sullenly yielding step by by step to the onward crush of a stronger civilization.

Turning from the study of the various races that lived in the colony, let us consider the life and occupations of the dominant people. As is the custom now, so in colonial times Englishmen and other visitors to this country felt called upon on their return home to write a book about America. From the account of one of those chroniclers the following picture of a planter's life is drawn. Though written after the colony had become a State, it may be safely viewed as representing to the traveller's mind ante-Revolutionary manners: "The gentleman of fortune rises about nine o'clock; he perhaps may make an excursion to walk as far as his stables to see his horses, which is seldom more than fifty yards from his house, he returns to breakfast between nine and ten, which is generally tea or coffee, bread and butter, and very thin slices of venison, ham or hung beef. He then lies down on a pallet on the floor, in the coolest room in the house, in his shirt and trousers only, with a negro at his head and another at his feet to fan him and keep off the flies, between twelve and one he takes a draught of bombo or toddy, a liquor composed of

water, sugar, rum and nutmeg, which is made weak and kept cool; he dines between two and three and at every table, whatever else there may be, a ham and greens or cabbage is always a standing dish. At dinner he drinks cyder, toddy, punch, port, claret and madeira, which is generally excellent here; having drank some few glasses of wine after dinner, he returns to his pallet with his two blacks to fan him and continues to drink toddy or sangaree all the afternoon, he does not always drink tea. Between nine and ten in the evening he eats a light supper of milk and fruit, or wine, sugar and fruit, &c., and almost immediately returns to bed for the night."[1] This is no doubt a bold generalization and would probably lead one to believe that the planter's time was mostly occupied in eating, drinking and sleeping. But he had duties as well as pleasures. When not engaged in entertaining friends, which was a great feature in colonial life, he was attending Court, or the Assembly, looking after the interests of his plantation, or training his sons the best way he knew in gentlemanly conduct. The centre of Southern life was the home and it is there one must look to find an explanation of Virginia character. The wealthy planter was really the head of a little kingdom, being the dispenser of all benefits and the adjudicator of disputes between overseers and slaves, or among the slaves themselves, over whom he had practically unlimited control. While the father was engaged in the pursuits of affluence, the young blades were galloping over the country on fine blooded steeds, attending cock fights, playing the beau at Williamsburg, or tracking animals of the chase or the Indian through the forests.[2] Such out-door

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[1] Smyth: Travels, &c., Vol. I., p. 41.

[2] "They are such lovers of Riding that almost every ordinary Person keeps a Horse and I have known some spend the Morning in ranging several Miles in the woods to find and catch their Horses only to ride two or three Miles to Church, to the Court House, or to the Horse-Race, where they generally appoint to meet upon Business, and are more certain of finding those that they want to speak or deal with, than at their Home." Jones: Present State of Virginia, 1724, p. 47.

occupations were conducive to high spirits, self-possession in times of danger, and familiarity with weapons of defense, but were not very well calculated to produce a strong desire to settle down to a definite occupation for life. But one sees the young men following their fathers' footsteps in such offices as church wardens, vestrymen, justices, burgesses and the highly honored Councillors. The Virginia youth had comparatively few advantages for acquiring a thorough book learning, owing to the absence of any common-school system, but the question of education was not entirely neglected. To be sure, in 1671, Sir William Berkeley, the staunch old royalist Governor of Virginia wrote: "But I thank God, *there* are no *free schools* nor *printing*, and I hope we shall not have these hundred years; for *learning* has brought disobedience and heresy and sects into the world and printing has divulged them and libels against the best government. God keep us from both!"[1] But these sentiments can hardly be taken as indicating that Virginians had taken such a backward step toward the dark ages, for, as early as 1621, efforts had been made to establish a free school in the colony. Rev. Patrick Copeland, while cruising in East India waters, became so interested in the welfare of that colony that he exerted himself in its behalf and persuaded the sailors and others on board the "Royal James" to contribute £70. This sum was further increased by the gift of £30 from an anonymous source and otherwise to about £150. The matter having been referred to the Virginia Company, the members at a meeting held in October, 1621, decided to use the funds in building in Virginia a free school—"a publique free schoole for the educacon of Children and groundinge of them in principles of religion." The use of the word free in this connection does not imply that the school was to be conducted as a charity, for it was expressly understood that the scholars were to pay.[2] This "collegiate or free school" was to be pre-

[1] Hening's Statutes at Large, Vol. II., p. 517.
[2] Neill: The Virginia Company, p. 254.

paratory for the proposed college in Virginia, which was constantly in the minds of Virginia's founders, but which was not organized upon any permanent basis for nearly a century. The question of education, however, was lost sight of for a time after the Indian massacre, and the project of the free school was abandoned.

In 1634, Benjamin Sym left certain lands and cattle for the use of a free school, which a writer some years later mentioned as being in existence. After William and Mary College had obtained a good foundation it exercised a great influence upon the colony. For some years the college struggled for life, and the history of its first years is very interesting. Connected with it was a school for Indians which had been endowed by Mr. Robert Boyle. Another school for Indians was conducted successfully for several years by Mr. Charles Griffin, at Christanna, a fort built by Governor Spotswood among the Saponies. These with a few charity schools in parishes constituted the school system, but that this system produced such men as James Monroe, Carter Page, Peyton Randolph, Edmund Randolph, George Wythe, Edmund Pendleton, and Thomas Jefferson, demonstrates that it was anything but useless and ineffective. Some youths, who could afford it, were taught by private tutors, perhaps the holders of neighboring benefices; from the tutor's hand they went to William and Mary, or to England, perhaps to both, and after having enjoyed the benefits of foreign travel, returned to startle for a time their friends by mannerisms, and then to undertake the duties of men of good family. The daughters of the planters were initiated into the mysteries of housekeeping by their mothers, who saw that they acquired the necessary amount of social training to fit them to become wives of neighboring landholders.[1] Such is a brief account

[1] The following extract from Bradford's History of New England, Vol. II., p. 265, is interesting, as it shows that at an early day the education of women was viewed in the same light both in New England and in Virginia.

of plantation life—the life of the greater part of Virginia, notwithstanding paper towns.

The words of Mill may be applied with the greatest propriety to the results of such a life in Virginia—"though governments or nations have the power of deciding what institutions shall exist, they cannot arbitrarily determine how those institutions shall work."[1] The colonial Governors tried to impress upon the people their dependence upon the king—the county system with its concentrated government might have been expected to aid such efforts. But the very state of society, that suppressed small communities, tended to support the growth of independent feelings. Large proprietors with hereditary acres may have been at times haughty and overbearing towards inferiors in birth or fortune, yet at the same time and for similar reasons there was fostered in them a spirit of independence and of readiness to repel intrusion or to resent an injury to themselves or their families. What cared a man, having hundreds of dependents at his beck and call, for the mandates of a government thousands of miles away, so long as he was left in undisturbed possession of his property and could look around upon wide stretching fields, woods, stock and slaves, and say, "All these are mine"? But

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"Mr. Hopkins, the Governor of Hartford, upon Connecticut, came to Boston and brought his wife with him (a godly young women and of special parts) who was fallen into a sad infirmity, the loss of her understanding and reason, which had been growing upon her divers years by reason of her giving herself wholly to reading and writing, and had written many books. Her husband being very loving and tender of her was loath to grieve her; but he saw his error when it was too late. For if she had attended her household affairs and such things as belong to women, and not gone out of her way and calling to meddle in such things as are proper for men, whose minds are stronger, etc., she had kept her wits and might have improved them usefully and honorably in the place God had set her. He brought her to Boston and left her with her brother one Mr. Yale, a merchant, to try what means might be had for her. But no help could be had."

[1] Mill: Principles of Political Economy, Vol. I., p. 41.

in the management of his home affairs he was always deeply interested, and was prepared after due consideration and exhaustive discussion, which was relieved by frequent feasting, to lend his voice in the election of burgesses from his county and parish, and in after years to listen to the representative's report of doings at Richmond. The gatherings together of freemen upon "court-day," once a necessity, when roads were few and poor, and still the custom, in close vestry, or at convivial assemblies, for which Virginia has always been famous, were eagerly seized upon as occasions for an interchange of opinions about local politics and questions concerning the welfare of the community. There is no other explanation of the extreme concern which modern Virginians take in the result of their elections. The merits and demerits of candidates for political honors are argued for months before the elections and with such vehemence in many cases that the disputants make a personal matter of the debate.

But because an aristocracy ruled, it must not be imagined that the spirit of liberty was crushed. All of the various officers, from Governor to church warden, were jealously careful of their particular rights and vigorously maintained them. The members of the House of Burgesses more than once asserted that power came from them as representing the people, and, hampered though they were by the Governor and Council, were on the alert for any chance of strengthening their claims. The justices of the peace, who were usually selected from the most influential and upright men of the colony, were grievously insulted when an unworthy person was commissioned to sit on the same bench with them. A great part of the history of the Established Church in Virginia is a recital of disputes between ministers and vestries, or between the vestries and the Governor, all parties claiming conflicting powers. But members of the Council, justices, burgesses, all could forget such differences and unite in any popular movement. Bacon's rebellion, an American Revolution in miniature, was an expression of plans that the people

were prepared to carry out. With most remarkable foresight, Attorney General Bradley, arguing in 1729 against the assemblies of the colonies, wrote the following remarkable prophecy of the Revolution of 1776: "The Rebellion formerly by one Bacon and his party in Virginia, proved very expensive and troublesome to the Crown even at that time when none of these countryes were near so populous as they now are; and though it may be thought impracticable at present for any of these provinces or places alone to attempt anything of that kind, yet, if several of them should even at this time joyn in such a conspiracy, (and could these Assemblies openly do more tho' they had actually so engaged,) it would be extremely difficult and expensive, if not impracticable at this distance and in such a thicket of wood and trees as these countryes are to reduce them to their duty and obedience."[1] While Bacon was in power there was very liberal legislation for a government more directly by the people, but the sweeping repeals of the following years had a contrary effect, and although now and then some law was revived, the practical results of the rebellion were counterbalanced by greater movements towards centralization.

On the western side of the Blue Ridge mountains a different kind of society existed. Slavery was not as general as in the older sections of the colony, and except in cases where land was owned by eastern Virginians, large plantations devoted almost exclusively to the culture of tobacco were fewer, and a greater variety of crops was raised by farmers, who worked in the fields themselves. Cattle raising was also found to be profitable by reason of the fine prairie pasturage. As has been said before, a large number of the settlers were Pennsylvania Germans or natives of Germany. They brought with them the habits and customs of their native land and impressed them upon other colonists. For some years there was little trouble from the original owners of the soil, but as the

[1] New York Historical Collections, Vol.. V, p. 902.

whites increased in numbers, the Indians became aroused, and committed many horrible outrages. From a combination of circumstances resulting from border life, another element was introduced in Virginia society which preserved the idea of local self-government, namely, the pioneers. These were in some cases poorer people who, failing to secure recognition in the aristocratic low lands, had sought homes in the mountain fastnesses and the wilderness, where all men were equal. Even under ordinary circumstances liberty thrives best in an elevated country divided into small portions by natural barriers, precipices, torrents, or forests. What is the result when this country is peopled by men virtually independent of each other and the world? The hardy backwoodsmen were the incarnation of freedom. For a considerable time they were left to their own devices, and true to their instincts they adopted a rude form of justice which was sufficient to meet the demands of a pioneer community. Even when the colonial government sent justices and other officers among them, there was little need of such an arrangement and little heed paid to the authorities. But the most adventurous and restless pushed still further into the wilderness, where the necessity of providing for themselves and of guarding against attacks of wild beasts and of savage men, and their isolation from their fellows led to self-help and individual power in every man. So in the aristocracy of the older Virginia and in the equality existing in regions settled by her sons, developed in course of time the same characteristic individualism. But this individualism, while it was very good as such, prevented the unity of some interests that make up well organized society. One product of it, however, was great men and the growth of hero worship. The Virginia statesmen of the first half of this century had few superiors in the legislative halls of the nation, and they possessed strong hold upon the people.

Washington, the Lees, Henry, and many others, educated for the most part in exclusive ideas, were at the front in the

field and in the forum, when the colonies resolved to resist with arms the invasion of English liberties by a force, that was deaf to expostulations, imagining that in it was concentrated supreme power. Virginia statesmen and commons united in the revolutionary effort and played no second part in a fierce war that was in effect terminated by a victory won upon Virginia's soil. Frontiersmen aided the general cause. On May 25, 1775, the representatives of the people of Kentucky, transmontane Virginia, announced as the foundation stone of their government, "That we have a right, as a political body, without giving umbrage to Great Britain or any of the colonies, to frame rules for the government of our little society, cannot be doubted by any sensible or unbiassed mind." They arranged then for the establishment of courts of justice, popular representation, religious freedom and in everything endeavored to "copy after the happy pattern of the English laws."[1] This is but a single example of an expression of the feeling, which was rife and which had been produced by pioneer life.

An endeavor has been made to show that even in the strongly centralized government of Virginia, there was a power at work, which prevented the people from lapsing into such dependence as to acquiesce, at the bidding of George the Third's representative, in the extreme measures of that unfortunate monarch. While there may not have been any strong inclination to establish small local forms of government, the rule of Virginians by Virginians was most acceptable.

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[1] Bancroft: The American Revolution, Vol. II., pp. 368, 369.

II.

THE LAND TENURE OF VIRGINIA.

Closely connected and firmly interwoven with the social and political institutions of any State is its land system. No people can properly find place in the ranks of state-life until it has settled within some definite area, has a fixed abode, and has acquired land, which is held as the property either of the people as a whole or of individuals. Before a land system, however simple, has arisen, a people, no matter how strong and numerous it may be, constitutes nothing but a nomadic horde, grazing its cattle on the world's common pastures, planting at random in the common fields of the human race, and deserting one region after another, as soon as provisions for man and fodder for beast have been consumed. It may be safely said that the land system is one of the most important elements, if not the fundamental principle, of the institutional life of a nation, and its influence may be traced particularly in the history of the English race. The local institutions of Virginia cannot, therefore, be properly studied without some investigation into its land system. The subject ought to be always interesting to Americans, inasmuch as Virginia was the first English colony in this country and one whose territory was diminished by the planting of other colonies and later by the formation of other States. It ought to be considered especially at this time when a certain school of economic writers is laying so much stress upon what it believes to be imperfections in the manner of holding land not only in America but in the civilized world.

At the time of the settlement of America it was a recognized principle of the law of nations that the discovery of an uncivilized country by the subjects of any European power gave to that power a title to the country, the only difficulty being the question as to what constituted discovery, or what nation was the discoverer.[1] This principle was the foundation of the right of the Crown of England to the country where Virginia was founded. The voyage of Cabot in 1498 was claimed as discovery, and to make the right doubly sure, letters patent were granted in 1578 to Sir Humphrey Gilbert, and upon his failure, to his kinsman Sir Walter Raleigh, in 1584. But the efforts of Raleigh resulted in nothing further than the bestowing of the name Virginia upon the new land, and plans of colonization were kept in the background for nearly twenty years, until the successful voyage of Gosnold in 1602 revived the hopes of making permanent and paying settlements in America. Accordingly in 1606 letters patent were granted by King James to certain persons, afterwards known as the Virginia Company, for planting settlements in America. The company was practically divided into two colonies: the first, represented by Sir Thomas Gates, Sir George Somers, Richard Hackluyt, Edward Maria Wingfield, and others who should be joined with them, will alone be mentioned in this paper, as the second after prolonged inactivity revived under the name of the Council of Plymouth for New England.

The first colony was to plant anywhere within the 34th and 41st degrees north latitude, but its territory, when it had made a settlement, was to be but one hundred miles square, with the islands within one hundred miles of the sea coast. By the second letters patent, granted in 1609, the adventurers were incorporated, and the limits of the colony, whose members in America had dragged out a feeble existence for over two years, were extended three hundred more miles along the

[1] Kent: Commentaries, III., sec. 379.

sea coast and inland from sea to sea. Within that vast region are now included the whole or parts of Pennsylvania, Delaware, New Jersey, Maryland, Virginia, West Virginia, North Carolina, South Carolina, Georgia, Tennessee, Kentucky, Ohio, Illinois, Indiana, Missouri, Alabama, Mississippi, Arkansas, Indian Territory, Texas, Kansas, Colorado, New Mexico, Arizona, Utah, Nevada, and California, but the king and people of England had no conception of the extent of this grant, for they imagined that a westward journey of a few hundred miles would bring the explorer to the South Sea, that *ignis fatuus* of the sixteenth and seventeenth centuries. Those limits were reduced by three grants, that of Maryland to Cecil, Lord Baltimore, in 1632, that of Carolina to Clarendon and partners in 1665, that of Pennsylvania to Penn in 1681, and by the subsequent agreements between the colonies in regard to the grants. By the Peace of Paris in 1763 Virginia was deprived of all territory west of the Mississippi river, and by the Act of the Assembly of 1781 the State ceded to the government of the United States all its lands northwest of the Ohio river. Still further were the limits reduced by the loss of Kentucky in 1792 and by the creation of the State of West Virginia in 1863.

By the letters patent the Virginia Company held its lands in free and common socage, and when the charter was taken away in 1624, the same principle prevailed, although the right was obtained directly from the Crown. When the first settlers came to Virginia it was inhabited by another race, and therefore the first thing to be considered is the way in which the rights of the original proprietors were regarded.

Indian Lands.

The idea prevalent at the time was that it was entirely just for a civilized nation to occupy the lands of a barbarous people, for "the cultivation of the soil was an obligation imposed by nature upon mankind, and that the human race could not

well subsist, or greatly multiply, if rude tribes, which had not advanced from the hunter state, were entitled to claim and retain all the boundless regions through which they might wander. If such a people will usurp more territory than they can subdue and cultivate, they have no right to complain, if a nation of cultivators puts in a claim for a part, and confines the natives in narrower limits."[1] But it was reasonable to suppose that the natives would not have similar opinions, therefore, the Virginia colonists were instructed, though not explicitly, not to allow the Indians to perceive at once that white men were to possess the land. The Company, as it stated, in 1622 claimed that "they held not their land from king Powhatan, but from king James," and it would appear that it tried to force the natives to the same acknowledgement. Old Powhatan, however, was not to be deceived when Captain Newport presented him the royal presents, and force had to be used to place the crown upon his head. But the Indian chief insisted that the land was his, and as if in sarcasm gravely conferred upon the captain, in return, his old moccasins and cast off mantle.[2] The Chicahominies, however, accepted the red coats and the images in copper of King James and consented to be his "noblemen," not understanding that thereby they became his dependents. The views which the Indians took may be illustrated by the remark of Blunt, an Indian chief, to Governor Spotswood, "that the country belonged to them before our *English* came thither, so that he thought they had a better title than we, and ought not to be confined to such narrow limits for hunting."[3]

The Company made grants in great profusion, and, the King following its example, there was little regard paid to Indian rights until they, aroused by increasing encroachments,

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[1] Kent: Commentaries, III., sec. 387.

[2] Neill: Virginia Company, p. 11; Stith: History of the Discovery of Virginia, p. 223.

[3] Jones: Present State of Virginia, p. 18.

had sought revenge in massacres. In 1644, three hundred of the colonists were massacred, and after two years had been spent in driving the Indians from their homes into the forest, it was deemed best to make a treaty with them. By the articles of peace the Indians relinquished their claim to the rich territory between the York and James rivers, but were allowed to dwell on the north side of York river. Any Indian found within the vacated region, unless he had the badge of a messenger or trader, would be punished with death, and any Englishman trespassing upon the Indians' territory would be regarded as a felon, being lawfully convicted, but by a pass from the Governor he could cut timber or sedge there. The chief of the Indians agreed to hold the land as from the King of England, and that his successors should be appointed or acknowledged by the Governor of Virginia.[1] This seems to have been the first attempt at reaching any agreement satisfactory to both races about land holding, and it will be observed that the benefit was principally on the side of the English. Later it was ordered that persons who had settled in Indian lands should be removed by the county courts, which also were empowered to take the acknowledgment of sales of land by the Indians, but as the Indians caused a great deal of trouble in seeking to obtain new dwelling-places after they had sold their old planting grounds, it was enacted in 1655 that lands granted to Indians by the government should be inalienable except by consent of the Assembly.

But the colonists continued to intrude, and the Indians in retaliation killed the white men's hogs and cattle. Moreover the Indians were influenced by threats to make sales of their lands, or the interpreters translated their desire to have their lands confirmed into a yielding of their title. Indians were, therefore, positively prohibited from selling any lands at all, and white squatters were to be removed by the sheriff and their houses destroyed. Whites living within three miles of

[1] Hening: Statutes, Vol. I., p. 323.

Indian settlements were even obliged to send hands to help the Indians to fence in their corn lands in order to protect them from the colonists' hogs and cattle.[1] An idea of the manner in which the government was endeavoring to protect the Indians' few remaining rights may be had from the following incident. In 1661 the Rappahannock Indians complained that a certain Colonel Moore Fantleroy had received a conveyance of land from them, and had failed to make satisfaction. He had improved the land, and, as the Indians were unable to pay for the improvements, it could not be given back to them, so the Colonel was commanded to pay to the Indians thirty matchcoats, each containing two yards of material, and the one for the king was to be decorated with copper lace. By his failure to carry out this order he forfeited, for the time being, in the following year all his land except that part of it which was cleared and a marsh; and again he was ordered to make the payment of the matchcoats.

By the middle of the eighteenth century the manner of holding land by the Indians had become systematized, and in the older portion of the colony the red men and the whites were living in comparative amity. The system was about as follows: the Assembly caused to be set apart certain tracts, which were large enough to enable the Indians to pursue their occupation of hunting, fishing, and corn planting. In 1658 it was enacted that no grant of land should be made until all tributary Indians had a quantity of land equal to fifty acres for every bowman. Land could not be ceded by any Indian tribe without the consent of a majority of the great men and by the approval of the Assembly, but lands deserted by the Indians lapsed to the government. The Constitution of the State of Virginia provided that, "no purchase of land shall be made of the *Indian* natives but on behalf of the public by authority of the General Assembly." When a tribe became too small to occupy all its land, trustees were appointed by the

[1] Hening: Statutes Vol. II., p. 139.

Assembly to sell the land, and the proceeds were either distributed among the members of the tribe, or expended in the purchase of other lands for their use. In one instance the church wardens of a parish, in which an Indian tribe was seated, were ordered to lease the Indians' unimproved land for the benefit of their infirm or sick. Indians, who had land granted by the Assembly, paid an annual tribute to the government. In 1708 Queen Anne and the great men of the Pamunkey Indians petitioned the Governor and Council to excuse them from paying their annual tribute, but the heads of the remnants of the tribe continued up to within a few years ago to visit each Governor and present him with game, &c. The Pamunkies still own several hundred acres of land in Prince William county, but their land is in charge of trustees whom their best men nominate from among the whites. The discussion of the subject of Indian land tenure can not be better closed than by the words of Palmer in referring to the Pamunkies: "Thus have lived in perfect security for nearly two hundred years among the descendants of their ancient enemies, a remnant of the original owners of the country wrested from them by the power of the whites. During all this time their little state has remained as free as Andorra among the Pyrenees, or San Marino by the sea. They represent the only organized community of aboriginal Americans now left on the Atlantic slope, and with their disappearance will probably have passed away forever the last of that mysterious race left east of the Mississippi.[1]

Special Grants.

Before entering upon the study of the land tenure of corporations and that of individuals in general, it has been thought best to give an account of certain grants made to favored individuals, which differed somewhat from the ordinary

[1] Palmer: Calendar of Virginia State Papers, Vol. I., p. li.

land grants. In the first Assembly there was a dispute about the rights of the delegates of Captain Martin's plantation to seats, and the subsequent discussion and investigation revealed the fact that there was in Virginia a modified form of the old English institution of manors. It must not be supposed that there were manors with courts leet and courts baron, as they afterwards existed in Maryland, but there was an institution akin to them. To Captain Martin, who was a member of the Virginia Company, had been illegally granted by a private court of the Company a tract of land in Virginia, which he was permitted by his patent to possess "in as ample manner as any lord of any manor in England." All settlers upon his land were independent of the Governor and Council of the colony and were exempt from service to the colony except in war. To Captain Martin was given the privilege of unlimited fishing, of establishing common markets, of working mines, and of enjoying a share of precious metals found on his posessions. Martin seems to have exercised his power, for there was a complaint made against him that he had allowed his territory to become "a Receptacle of vagabonds and bankrupts and other disorderly persons, (whereof there hath bin made publique complaint) . . . who hath presumed of his owne authority (no ways deriued from his Ma^tie) to giue uniust sentence upon diuers of his Ma^tie subjects and seen the same put in cruell execucon."[1] This statement, however, may have been exaggerated by reason of the bitter feeling against him. His refusal to submit to the laws of the colony caused the delegates to lose their seats, for the Assembly very honestly confessed its ignorance of the prerogatives of all English manors. Martin's patent was revoked in 1622, and a new one offered him, which after some delay he accepted. In October, 1623, he voted in England for the surrender of the Virginia Charter, and, no doubt as a recognition of his services, the Privy Council in December of the same

[1] Neill: Virginia Company, pp. 291, 292, 313.

year recommended that "more than ordinary respect should be had of him," and that he and all under him should not be oppressed, but allowed to enjoy their lands and goods in peace.[1]

Somewhat similar grants were made in 1679 by the Assembly to Major Laurence and Captain William Bird. For the defence of the frontiers Captain Bird was to settle at the falls of the James river two hundred and fifty men, of whom fifty were to be always ready to arm, and Major Smith was to do the same thing at the head of the Rappahannock river. Upon the fulfilment of these and other similar conditions the commander in each place was to possess full powers to execute martial discipline, and with two other inhabitants of the settlement, who should receive from the Governor a commission for the purpose, were to be granted the rights of county courts, and with six other persons elected by the inhabitants could make by-laws. The inhabitants were to be free for fifteen years from any levy except what they might lay upon themselves. There is no definite record of such settlement having been made, though the reference to laying the foundation of Richmond in 1733 by Colonel William Byrd would seem to imply that the other Bird had received the grant.[2]

Probably the most extraordinary grants in the history of Virginia land tenure was that of King Charles II., in 1673, to his two favorites, Lords Culpeper and Arlington. He gave to the two lords, to be enjoyed by them for thirty-one years, the whole territory of Virginia—"the entire territory, tract and dominion, commonly called Virginia, with the territory of Accomack, with all its rights, appurtenances and jurisdiction." All lands which ordinarily would have been forfeited to the King were to escheat to them. To them, instead of to the King, were to be paid the quitrents and any other royal dues, and even those rents which had been in arrears as far back as

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[1] Sainsbury: Calendar of State Papers, Colonial, 1574–1660, p. 55.
[2] Byrd: History of the Dividing Line, II., p. 9.

1669. They were also privileged to make all land grants, to nominate sheriffs, surveyors, &c., to present ministers to parishes, to bestow land upon the vestries for parish purposes, and to make whatever division they wished of the country into counties, parishes, &c. There were many provisions in this grant contrary to the prevailing laws of Virginia, repugnant to the principles of free institutions, and unpleasantly affecting the rights of persons who had long held lands obtained in the usual manner. Accordingly, the Assembly in 1674 voted a large sum of money to support in England three agents, Colonel Francis Moryson, Mr. Thomas Ludwell and General Robert Smith, who were to influence the King to nullify the grant and to give the colony a new charter. They zealously attended to their trust, calling upon Lord Arlington, conferring with the agents of the two patentees, and endeavoring to make some adjustment acceptable to both parties. After considerable hesitation and delay, the agents proposed to the two lords that they should yield the patent and take in exchange one allowing them the quitrents, which, after all, were the main source of controversy, and the following reply was at last made by Arlington and Culpeper: " . . we think fit hereby to assure the gentlemen that after vacating our present patent and passing a new for the said quit-rents and escheats, which we here promise to do with all convenient speed, we shall redily agree to a collateral agreement with the said colony for the payment of the quitrents and escheats, in the same manner by them proposed."[1] Afterwards Arlington proposed that the agents should buy their right, and the matter seems to have been dropped for a short period. Arlington then conveyed his right to Lord Culpeper, who in turn relinquished his patent in favor of the King, and thus, after some years of dispute, the colony in 1684 came again under the immediate control and protection of the Crown.

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[1] The documents in regard to this grant are printed at length in Burk's History of Virginia, Vol. II., Appendix, p. 340.

In the very first year of his reign, and while he was still an exile from his kingdom, Charles II. had granted to Lord Hopton, Earl of St. Albans, John, Lord Culpeper, and others the Northern Neck of Virginia, the territory lying between the Rappahannock and Potomac rivers, for which they were to pay, in lieu of service, annually to the King, £6, 13s, 4d. and to give a share of gold and silver found in the region. In 1671, most of the grantees having died, Charles regranted the region to the Earl of St. Albans, Lord Berkeley, Sir William Morton and John Tretheway, on the same conditions. The new proprietors could enjoy privileges similar to those afterwards conferred upon Arlington and Culpeper, and could divide the territory into manors in which they might hold a court baron, "and further to hold, within the said manors, a court leet, and a view of frank pledge, of all the tenants, residents and inhabitants of the hundred within such respective manors" twice a year.[1] But there was a proviso that the rights of those who already held grants from the government of Virginia should be unmolested, that the proprietors should not interfere in the military affairs in their territory, and that the Governor, Council and Assembly alone should have the right of laying a tax upon the inhabitants of the Northern Neck for the public good. After trying in vain to sell their rights to the agents for the colony of Virginia, the proprietors sold the territory and their rights to Thomas, Lord Culpeper, from whom they descended to Thomas, Lord Fairfax. That eccentric but shrewd proprietor managed his lands through an agent for some years, but he finally settled in Virginia and attended to his own estates. He soon persuaded himself that the Northern Neck ought to include a considerable region in the Shenandoah Valley and petitioned the King to enlarge his grant. This was done on condition that the rights of those who had already taken out patents from the King should not be disturbed. Fairfax, however, undertook to grant

[1] Hening: Statutes, Vol. IV., p. 517.

away certain lands which were held by royal grant, and the consequence was a lawsuit which continued for half a century. The proprietor divided part of his domain into manors, such as the Manor of Leeds, South Branch Manor, Patterson Creek Manor, Greenway Court Manor and Goony Run Manor. Some persons had already settled in one or two of these manors, and to those who remained he granted ninety-nine years' leases, which paid a rent of twenty shillings annually for every hundred acres. To new settlers land was rented at two shillings per hundred acres annually. Upon receiving a grant each person was obliged to pay ten shillings as a composition to the proprietor. The practice of paying composition and quit-rents in the Northern Neck was continued until 1785, when the Assembly abolished it.

Akin to the Fairfax grant was the grant of Beverley Manor, consisting of 118,491 acres to William Beverley and others, in 1736, the land was to be held upon the payment annually of about £118 to the King, and on condition that within three years the grantees should have improved three acres in every fifty of the whole tract. The last provision was no doubt intended to prevent the cession of large tracts, and to encourage closer settlement. Such grants, however, were most distasteful to the inhabitants of Virginia, for they prevented the country from being settled in a way that would have made it more regularly cultivated, and created a class of land monopolists, who, deriving their possessions from royal favor, were subservient to royal interests, were practically able to rule their tenants, and consequently to block the progress of independence, if they dared to do so.

Parish and Town Lands.

Opposed to the immense proprietary possessions, whose chief benefit was in increasing the wealth of individual favorites, were the lands of parishes and of towns, which were held for the public weal. Among the first lands laid out by the

company were set apart places for a church and glebe, and afterwards it was ordered that glebes for the use of the incumbent should be secured in every parish. Glebes were either bequeathed by piously disposed individuals, bestowed by the Assembly, or bought by the vestries with the proceeds of parish levies. The vestries had a general oversight of the parish lands, which were generally under cultivation, and upon which were built the incumbent's dwelling. The question as to whether any but an inducted clergyman had a right, while rector, to the glebe was mooted from time to time, but was never definitely settled, as there was also a dispute about the meaning of induction and about the persons or person in whom the right to induct was vested. In regard to this matter the Rev. George Robinson wrote to the Governor in 1695 as follows:

"The last time I had the honour to wait upon y^{or} Excell., I Enform'd you that there was a little controversy between our Vestry & me about our Church Glebe, to which I claim a peculiar right, they, on the contrary, pretending that only an inducted minister has just title thereto. But methinks 'tis a little hard clergyman conversant about so sacred a function should not onely be year by year hired by their parishioners assuming to themselves the liberty of determining y^{e} quantity of their Salaries, but also for want of this induction be debarred from the possession of their glebes at first devoted to so pious a use as the maintenance of the Ministry. This (if connived at) is no great incouragement for divines of any note or spirit to live here. Therefore I humbly beg you^{r} Excell. that the business of the glebes, but especially mine in particular, may now be taken into consideration, in order to the rectifying thereof, ... And truely it is not any profite y^{t} may accrue to me by this Glebe, that I regard so much as the bad presedent this instance may be to oy^{r} parishes, ..."[1]

[1] Palmer: Calendar of Virginia State Papers, Vol. I., p. 49.

The subject of glebe lands is interesting in view of the final disposition of them. Towards the middle of the eighteenth century interest in the affairs of the parishes began to weaken, in consequence partly of the opposition to the Establishment. When in 1776 dissenters were by law relieved from paying tithes for the support of ministers of the Church of England, it was ordained "that there shall in all time coming be saved and reserved to the use of the church by law established the several tracts of glebe land already puchased, &c.," and in 1783, when the former members of the church of England were incorporated as the Protestant Episcopal church, the glebes were vested in the minister and vestry of each parish. An Act of 1799, however, declared that all property of the Church had, at the Revolution, become the property of the Commonwealth and that prior legislation, in regard to it, had been unconstitutional. Upon the principle recognized in this Act, the Assembly in 1802 passed a general law providing that all glebe lands, which were then vacant, or should become so, should be sold by the overseers of the poor. The beginnings of this movement can be traced back to the Act of May, 1780, whereby certain vestries had been dissolved and their powers vested in overseers of the poor, and the Act of 1784, in which a similar special provision was made in the case of a glebe in Augusta county. The question of the sale of the glebes was discussed upon constitutional grounds, but behind these was the feeling among dissenting denominations, that the Episcopal Church in possessing the glebes was enjoying particular privileges, and the feeling against the Established Church, which was well founded before the Revolution, was continued against the Church of England's successor. The opponents of the glebe system argued: "1. That most of the glebe lands were originally purchased with money levied upon the people at large, and that consequently, whenever a majority of the people desired a sale of the lands, they should be sold and the money applied to such other use as might seem best to them. 2. That, if the church was

permitted to retain the property, a certain pre-eminence and superiority was thereby conferred, which was odious in a republic and inconsistent with its institutions. 3. That the fourth article of the Declaration of Rights of Virginia asserted, 'That no man or set of men are entitled to exclusive or separate emoluments or privileges but in consideration of public services,' but the enjoyment of the glebes did confer upon the church 'exclusive emoluments from the community,' and was consequently unconstitutional." The case of one parish, that of Fairfax, where, by a special Act in 1801, the overseers attempted to dispose of the glebe, was carried to the Supreme Court, which declared the Act unconstitutional on the ground that the Protestant Episcopal Church had succeeded to the right to property of the Establishment, and being a private corporation had all the privileges of such. The decision, which was written and delivered by Judge Story, asserted that the Supreme Court could not admit "that the Legislature can repeal statutes creating private corporations, or confirming to them property already acquired under the faith of previous laws, and by such repeal can vest the property of such corporations exclusively in the State, or dispose of the same to such purposes as they may please, without the consent or default of the corporation." This judgment was in accord with justice and with practice elsewhere, for in Maryland the right to the glebes remained in the vestries of the Protestant Episcopal Church and is still enjoyed. It has been thought advisable to treat the question of glebes at this length in order to call attention to the Act of Virginia legislators which stretched the doctrine of eminent domain to the borders of modern socialism.[1]

How towns were brought into existence will be told in another chapter, but the history of land tenure in towns belongs properly in this place. There are indefinite allusions

[1] The history and documents relating to the glebe question can be found in Meade's "Old Churches and Families of Virginia," Vol. II., Appendix.

to the existence of town lands under the Company's rule, but by what title they were held or in whom vested cannot be accurately determined, and, therefore, the real history of them begins with the Act of 1680, by which each county was ordered to buy at a fixed price fifty acres of land for a town, which land was to be vested in trustees. A similar Act was passed in 1691, and although it was suspended, the lands which had come into possession of trustees were confirmed. After the seventeenth century had closed, many small towns were erected and the system of land holding was as follows. By Act of Assembly the county courts laid out in half acre lots a site for a town. The land, which had either been appropriated from the public domain or bought from individuals, was vested in trustees, who sold the lots in fee-simple, and appropriated the proceeds in paying for the land or in defraying public expenses. Those who bought lots had to build upon them and inclose them within a certain time or forfeit them. In the towns, spaces were generally left for a market house, church and other public buildings. Frequently individuals laid out some portion of their estates for towns, and in such cases no trustees were appointed unless difficulties about the laying out of lands arose, but the titles to the lands were confirmed. When the town became a borough the title to the town lands was transferred to the corporation. There was little recognition in Virginia of land community, which existed in New England and which was the oldest form of land-holding among the ancestors of the English. Fifty acres had been set apart in 1634 as a common for the inhabitants of Stanley Hundred. The Act for establishing Williamsburg provided that at the ports on the James and York rivers sufficient land should be reserved as a common, probably to be used as a quay as was done in other towns, and the Act for establishing Richmond made provision for a common, which however was vested in William Byrd, the original proprietor of the land. With few exceptions, the idea of common lands seems to have been in the back ground. Before leaving this

section it will be well to mention, as showing the prevalent opinion of legislators, an Act for dwelling together passed in 1701. As an encouragement to settlers upon the frontiers, it was enacted that if persons should organize themselves into societies, they could possess thirty thousand acres of land to be held in common. Two hundred acres of these lands were to be set apart for house lots. The Act stated that "there shall be granted to every such person untill the said quantity of thirty thousand acres shall be completely taken up, a right to two hundred acres of land next adjacent at his choise, together with halfe an acre to seat upon and live in not before seated upon within the said two hundred acres to be laid out for the cohabitation."[1]

Grants to Individuals.

Last, but not least, is to be considered the land holding of the vast number of individual proprietors, who held tracts of land of from fifty to two thousand or more acres, and who formed the body of Virginia planters as distinguished from the merchants and the money-seeking proprietors. With the exception of the members of the Virginia Company, most of the first settlers came to Virginia in the capacity of servants, and were employed upon the public lands of the colony. Those who served five years were entitled to one hundred acres, or "his divident," and if such land was improved by seating and planting within three years, the planter had a right to one hundred acres more. Grants of land were made to those members of the Company who went to Virginia themselves or sent settlers, who rendered service of importance to the Company, or who invested money in it. Sir Thomas Dale instituted the system of general land holding by his allotment to every man in the colony three acres of land which he was allowed to work eleven months in the year,

[1] Hening: Statutes, Vol. III., p. 206.

upon payment of two barrels and a half of wheat for himself and each of his servants, and in the other month he was liable to be called upon for service in behalf of the colony. The inhabitants of New Bermudas were not included in this arrangement, but they were to work three years for the colony and then to have their freedom. Those who labored for the colony received a certain allowance from the store and could work their land one month in the year.[1]

The general system adopted by the Crown after the dissolution of the Company was to grant to each person coming to Virginia fifty acres of land, which were held upon the payment of an annual quitrent of one shilling for every fifty acres. The manner of taking up land was as follows. The person desiring land went before the county court and made affidavit of the number of persons he had brought into the colony.[2] The clerk of the court made a certificate of the same which was transmitted to the Secretary's office. If it was regular the petitioner was given a warrant which was shown to the county surveyor, who was required to lay out the lands where the petitioner desired, unless they had already been appropriated. Copies of the survey and warrant were

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[1] The way in which Sir Thomas Dale allotted the land cannot be precisely ascertained, as accounts by contemporaneous authors differ. The statement above is made after a careful comparison of the accounts by Hamor, [Narrative, &c., p. 17,] Smith, [General History, II., p. 17,] Rolfe [Virginia Historical Register, Vol. II., pp. 106–107].

[2] The following tradition regarding a grant to one Stover is told by Kercheval, in the "History of the Valley," p. 65. "On his application to the executive for the grant, he was refused, unless he could give satisfactory assurance that he would have the land settled with the requisite number of families within a given time. Being unable to do this he forthwith passed over to England, petitioned the King to direct his grant to issue, and in order to insure success had given human names to every horse, cow, hog and dog he owned, and which he represented as heads of families ready to emigrate and settle the land. By this disingenuous trick he succeeded in obtaining directions from the King and Council for securing his grant, on obtaining which he immediately sold out his land in small divisions at three pounds per hundred acres and went off with the money."

returned to the Secretary's office, where a patent was made out, which, upon presentation to the Governor and Council, being found correct and no objections arising, was signed by the Governor, and recorded in the office of the Secretary. But to secure the land the planter had to "seat" the tract, that is to build a house upon it and to keep stock for one year, and to "plant" it, by which was meant clearing and planting one acre of ground. If these conditions were not fulfilled within three years, the land "lapsed" to the government and might be granted to any person, and even to the original grantee, who should petition the Governor and the general court for the same, and whose petition was accepted. The lands of persons who died without heirs, or who were aliens, "escheated" to the crown, and if no title to the lands was shown, the land was granted to whomsoever the Governor and Council thought fit, the grantee paying two pounds of tobacco per acre as a composition. If a man died within the three years allowed him for strengthening his title, and left an heir, the county courts were empowered to take security from the guardian that the quitrents should be paid, and three years should be allowed the orphan after coming of age to make the title good. The bounds of lands were marked by water courses, rocks and blazed trees, and to preserve these marks it was necessary to "procession" the lands, but when this had been done three times, the bounds were unalterably fixed.[1] There were certain special grants of land, as the one hundred and thirty-three acres to each of the French Huguenots, who settled at Manican town, and the bounties to soldiers in the war of 1763, and there were certain irregular modes of acquiring land, such as by "corn right," by "tomahawk right," and by "cabin right," followed by the settlers in

[1] Hening: Statutes, Vol. I., pp. 274, 291, 466; II., pp. 244, 315; IV., p. 31; V., p. 428. Beverley: History of Virginia, pp. 225–227, Virginia Historical Register, Vol. II., pp. 190–194. Brock: Spotswood Letters, Vol. I., p. 23. Jefferson's Works, Vol. I., p. 139.

the valley before Fairfax asserted his claims, but these cannot be included in the regular system. Lands could be held in fee-simple, in fee-tail and by "courtesy of England,"[1] but in the eighteenth century the system of entail and primogeniture predominated and caused a great deal of trouble, as entail could be barred only by Act of Assembly, but it was not abolished until 1785, in which year, also, the inhabitants of the Northern Neck were freed from paying quitrents and composition.

In discussing the revisal of the land laws of Virginia, Jefferson wrote: "Our ancestors, however, who migrated hither were laborers, not lawyers. The fictitious principle that all lands belong originally to the King, they were early persuaded to believe real, and accordingly took grants of their own lands from the crown." The doctrine of the King's right was undisputed at the time of the settlement of Virginia, and if the settlers were not lawyers, their Assembly managed to introduce a complicated system of land tenure, which, in some respects, was followed more strictly than in England, where the legislation probably originated or was suggested.

[1] "A tenure by which if a man marry an inheritrix, that is a woman seized of land, and getteth a child of her that comes alive into the world, though both the child and wife die forthwith, yet if she were in possession, shall he keep the land during his life, and is called tenant *per legem Angliæ* or by the *courtesy* of England." Cowell, in Johnson's Dictionary.

III.

THE HUNDRED.

The origin of the English hundred as a territorial division has never been satisfactorily explained. Traces of the institution are to be discovered in the hundred assessors of the German *pagus* and the hundred warriors sent to the host, but here the word has a personal signification. Stubbs, after discussing the various views as to the connection between the German personal and the English territorial hundred, draws the conclusion that, "under the name of geographical hundreds, we have the variously sized pagi or districts in which the hundred warriors settled," with boundaries determined by grants to chieftains, the possession of surviving Britons and other causes. Whatever may have been the origin, the institution was recognized very early in the history of England and was probably one of the oldest local divisions of the conquerors.[1]

Equally involved in obscurity is the beginning of the hundred in Virginia, and the history of its various phases is rather curious, not only because it was the first English local division instituted in America, but besides having both a territorial and personal signification, it assumed different relations to the general government of the colony at different periods. The use of the word personally was no doubt due to the influence of the military character of the colony. The hundred was used as a kind of unit; thus, in 1609 Captain

[1] Stubbs: Constitutional History of England, Vol. I., p. 98.

Francis West led a hundred and odd men up the river to settle near the falls, while Captain John Martin was in command of a hundred men on the south side of the river in the Nansemund country.[1] A few months afterward, Strachey, engaged upon the martial code, wrote, "no lesse shall we read how that first & great commander over the colony of the children of Israel, conducting them from Egypt to make their plantation in the land of promise, appointed captains over tribes and hundreds."[2] It would be interesting to discover the stages of the transition from the personal to the geographical hundred, but several links are missing. Martin's company abandoned the settlement at Nansemund, which was thirty miles below Jamestown, but seven years later there appeared in the records the name of Martin's Hundred, which was, however, on the upper side of the river and but seven miles below Jamestown. Sir Thomas Dale may have been influenced by his strong instincts for martial regulations, when he "laid oute and annexed to be belonging to the freedom and corporation [of New Bermudas] for ever many miles of Champion and woodland in severall Hundreds, as the upper and nether hundreds, Rochdale Hundred, West's Sherly Hundred, Digges his hundred,"[3] and this act of his may have marked the change to the territorial basis. West's Sherly Hundred, which is elsewhere called West and Shirley Hundred, may have owed half of its name to the expedition of Captain Francis West in 1609, and when these facts are considered in connection with the instructions to Governor Wyatt in 1621, to allow none but the heads of hundreds to wear gold lace on their clothes, and the provision in 1660 that when a county should "lay out one hundred acres of land and people itt with one hundred tithable persons, that

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[1] Peter Force's Tracts, Vol. III., Lawes Diuine, Morall and Martiall, p. 14.

[2] Ibid., Vol. III., p. 36.

[3] Hamor's Narrative, &c., pp. 31–32.

place should send a burgess to the Assembly," there is room for the conjecture that in the beginning the personal hundred preceded and imposed its organization upon the territorial division of the same name.[1]

However that may have been, the territorial idea absorbed the personal, and, as a geographical unit, the hundred in Virginia corresponded somewhat in kind, though not in number and regularity, to the same division in Maryland some years afterward. In the sister colony hundreds were regular divisions of the county, though they were not symmetrical or equal in area, for their names, such as Herring Creek, Middle Neck, South River, &c., indicate that natural boundaries were at first adopted. When the parish system was imposed upon Maryland in 1692, the hundreds were used as the basis for the new division, but as population became denser the number of hundreds in the *county* were increased. Here even the personal idea crops out, but in the increase little regard was paid to parish boundaries, so that frequently parts of the same hundred were in different parishes. The confusion arising from this arrangement caused an Act to be passed by which county courts were empowered so to lay out the hundreds anew that no hundred should be in more than one parish. In Virginia, also, there was a connection between the parish and the hundreds, for in 1627 the minister and church wardens of Stanley Hundred made their report of marriages, deaths and

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[1] Hening's Statutes, II., p. 20. In South Carolina a similar plan was proposed. Governor Johnson was directed in 1730 to encourage the building of towns. "Each town shall be formed into a Parish, the Extent whereof shall be about 6 miles round the Town on the same side of the River, and as soon as a Parish shall contain 100 masters of Families, they may send Two members to the Assembly of the Province." [A Description of the Province of South Carolina, Drawn up at Charleston in September, 1731, p. 125 of Carroll's "Hist. Col., S. C."] This plan seemed to have been unsuccessful, for in a work published in 1761, it is stated that "some towns, which by the king's Instructions have a right to be erected into Parishes, and to send two members are not allowed to send any." Carroll, etc., p. 220.

christenings, and the church wardens presented a man for immorality; a record of the year of 1700 shows that there was a parish of Martin's Hundred, but in both these instances, as was also the case in Maryland, the parish took its name only from the district in which it was laid out or which it included, and in Virginia had no institutional relation to the hundred.

The hundreds were not created with any attempt at regularity as to area, Martin's Hundred having been reputed to have 80,000 acres, Southampton Hundred which extended for almost ten miles along the upper bank of the James river, from Weyanoke to the mouth of the Chickahominy river, having 100,000 acres and Flowerdieu, or Flower de, Hundred, which was opposite Weyanoke and on the south side of the river, having 1,000 acres. Flowerdieu Hundred was the property of Sir George Yeardley, and after his death was conveyed by his widow to Mr. Abraham Persey, and Pers(e)y's Hundred was probably the same place, as it corresponded to Flowerdieu Hundred in situation and in the number of its acres.[1] Whatever may have been the original territory embraced in the hundred, the name was gradually restricted to

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[1] Burk: History of Virginia, Vol. I., Appendix. Hening: Statutes, &c., Vol. I., p. 145. Some authors speak of Southampton Hundred as lying on the Bay shore, but the writer has found but one allusion which would account for this. Stith, in his history, page 172, wrote that Smith's Hundred "lay in the Parts above Hampton, up into Warwick," and a few lines below that, the name of Smith's Hundred "was afterwards changed to the name of Southampton Hundred." It is probable that in the latter sentence he was referring to the body in England called Southampton Hundred, which seems to have been the same as Smith's Hundred, as may be seen from the following facts. In 1620, when the Virginia Company were debating the question of the education of the Indians, by means of funds given by "Dust and Ashes," it is recorded "that the corporation of Smith's Hundred very well accepted of the charge of infidels' children recommended unto them by the Court, . . . but . if the court shall please to take it from them they will willingly give £100," and further on it was advised "that it [the education of the Indians] should be wholly in charge of Smith's Hundred." Later, in 1621, the unknown donor of the money, £550, wrote that "the gentlemen of Southampton Hundred have undertaken

the actual settlement or collection of houses, in which form the name of one of the first hundreds is preserved to-day in Bermuda Hundreds with its one hundred and thirty-nine inhabitants.

The freemen in the old English hundreds elected their ealdorman, or hundredes-ealdor, to represent them in the shire-moot. In Virginia the hundred became the basis of a higher representation. In the first Assembly there were two burgesses from Martin's, Smythe's and Flowerdieu Hundreds, respectively, on an equality with those from the boroughs and private plantations. To the Assembly of 1629 Flowerdieu Hundred sent one burgess, Martin's Hundred sent two burgesses, and Shirley Hundred island and Shirley Hundred main, each sent two. In the Assembly which met in February, 1632, there was no burgess from Martin's Hundred, while there were two men representing the two Shirley Hundreds and two plantations, and one man representing Flowerdieu Hundred, Westover and Weyanoke. The practice of uniting adjacent settlements and plantations as an area for representation continued until 1634, when the county was instituted, and after which no burgesses sat for hundreds.

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the disposing of the said £550," and Sir Edwin Sandys, with reference to the letter, reported that the court had "resolved that it was fittest to be entertained by the societies of Southampton Hundred and Martin's Hundred," that Martin's Hundred had declined and that Southampton Hundred had "offered an addition of £100 more unto the former sum of £550, that it might not be put upon them." [Neill: Memoir of Rev. Patrick Copeland, pp. 25, 26, 27, 40, 41, 42, 43]. Aside from these facts, the writer's reason for believing that Southampton Hundred was situated above Jamestown is due to two statements: 1st. In the Appendix to the first volume of Burk is a list of corporations and persons owning land in Virginia, and the situation of the lands of Southampton Hundred is given as above. 2nd. In the list of persons slain in the massacre of 1622, the number slain is recorded by plantations, &c., beginning at Falling Creek and going regularly down the river to Mulberry Island, and in this order Southampton Hundred follows Martin's Brandon and precedes Martin's Hundred, and the plantations below it. Besides the hundreds in Virginia named here and elsewhere, there were also Berkeley Hundred and Bartlett's Hundred.

There does not appear to have been any such relation of the hundreds to the county as existed in Maryland, except, perhaps such as existed in Charles City county, which, as will be shown in another chapter, developed from Charles City. The early Virginia planters wrote in 1625 (?) of their "buildinge Charles Citty and Hundred," under the direction of Sir Thomas Dale, of their residence at "Charles Hundred," of Governor Yeardley's finding, upon his arrival, "Charles Citty and Hundred," among the existing forts, towns and plantations, and that then "Charles Citty" had only six houses.[1] This interchangeable use of the words "hundred" and "city" would indicate that they were identical, and if this was so, Charles City Hundred bore the same relation to Charles City county, as did Martin's Hundred to Martin's Hundred parish, that is, it gave the name to and was included in the new division.

There is no record of the hundreds having been an area for judicial or military purposes, unless it be in the law passed in 1624, that monthly courts should be held in the corporations of Elizabeth City and Charles City by the commanders and commissioners of the Governor, and in the general practice of the commanders, having charge of the military and minor police matters in their respective plantations. But here the commanders for military purposes and the commissioners for judicial and police matters in the plantations, in which were doubtless included the hundreds, were not the elected hundred-men or hundredes-ealdors, of England, but they were the appointees of the Governor. Two hundred and fifty years and more were to pass before the people should elect their local magistrates in the townships, districts, or, as Jefferson called them, hundreds.[2] Edgar and Ethelred used the hundred as a district, or as the integral parts of a district for levying taxes, and in Virginia, Mr. Peter Ridley was in 1647 appointed as collector of the public levies for "Martin's Hundred and this side of Kerls' creek," but there is no rea-

[1] Colonial Records of Virginia, pp. 76–77. [2] See Conclusion.

son for believing that the hundred was a regular division for fiscal ends.

In the records of the Virginia Company of London, are allusions to a peculiar phase of the Virginia hundred. In 1618, when the colony was so "weake and the Treasury utterly exhaust Itt pleased diuers Lords, Knights, gentlemen and citizens (grieued to see this great Action fall to nothinge) to take the matter a new in hand and at their priuate charges (ioyninge themselves into Societies) whereof the first of any moment called Southampton Hundred hath 320 persons sent unto itt, the next called Martin's Hundred above 200." These organizations, which were called at different times the "Societies of Martin's Hundred," the "adventurers of Martin's Hundred," the "gentlemen of Southampton Hundred," &c., were formed in England and busied themselves in sending colonists to the places of the same name in Virginia and seeing that they repaid, not directly, the investment and helped to strengthen the colony. These societies perished with the dissolution of the Company.[1]

We have considered the hundred in all its forms. To emphasize them and to impress the fact of their existence upon the reader they will be enumerated in succession. There are statements implying the use of the word hundred in Virginia as a military division, as a place to be settled by a body of persons originally a hundred men or heads of families, as a member of an incorporated town, as an area for representation and for rating, as related indirectly to the county and the parish, and as giving a name to sub-societies of the Virginia Company who cared for its settlement and cultivation.

That the hundred did exist is not surprising, for aside from legislation of direct English origin for the introduction of institutions, the colonists were unconsciously led by their English instincts to reproduce some of the old customs, laws and institutions, of which the hundred was but an example.

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[1] Neill: Virginia Company, pp. 176, 237, 247, 281, 325.

IV.

THE ENGLISH PARISH IN AMERICA.[1]

The word parish is derived through the French and Latin languages, from the Greek *παροικία*, which originally meant either a collection of men not enjoying full rights of Greek citizenship, or a class distinct from the rest of the people. In the latter sense, it was the designation of a body of Christians living in a city and its neighborhood, to distinguish them from the other inhabitants. Gradually, as Christianity spread over western Europe and the church organization became more determined, it was adjusted to the civil and military divisions bequeathed by the Roman provincial system, and the *parochia* acquired a territorial meaning and was applied to the district under the care of a Bishop. Under the Roman system any organization such as the modern parish would have been almost impossible, and one of the most potent preventives would have been the centering of all things

[1] This chapter appeared originally in May, 1883, in the American Repository of History. It was afterwards used in an article for the CHURCH CYCLOPAEDIA, and by the courtesy of the editor, Rev. A. A. Benton, and of the publishers, Messrs. Hammersly & Co., Philadelphia, appears in this monograph. The whole of the encyclopaedia article is not reprinted but the title is preserved. In the study of Virginia parishes great help has been obtained from Bishop Meade's invaluable work, "Old Churches and Families of Virginia." Want of time has compelled the writer to make use of the Bishop's treatment of original records, instead of consulting the documents themselves, which are preserved in the library of the Virginia Theological Seminary, at Alexandria.

ecclesiastical and lay in the hands of the priests, and through them in the Bishop. It is not known positively when the *parochia* was introduced into England, for the whole subject of introduction thither of church forms is obscure, but Gildas, writing about the sixth century of our era, used the word to denote the territory under the jurisdiction of the Bishop in Wales.

The local territorial divisions introduced into the island by the English were but reproductions or developments of the conquerors' organization in Germany, and they were but little if in any degree, affected by the Roman-Celtic institutions, which they supplanted. The Christian church was nearly crushed, but Christianity was brought back into England from two directions and by different methods. The policy of the Roman missionary was to convert the ruler and to organize downwards. The practice of Aidan and his successors in the North, was to labor among the people, establishing mission stations here and there, and to work upwards to the King. The two methods modified by each other resulted, according to Stubbs, in the priest being naturally confined in his ministrations to the territory of the township, or of a number of townships united, while the Bishop superintended the religious work of the shire or of the kingdom.[1] Thus the civil and ecclesiastical organizations, with no apparent intention on the part of the authorities in so ordering, were developing side by side, and the Englishman's duties to Church and State were becoming more nearly related, so that the laity probably began to claim a right to participate in the directing of church affairs. The tendency to coalesce was greatly increased, though somewhat modified, by the unifying work of Theodore of Tarsus, the traditional founder of the English parish in its restricted sense. But Pearson asserts that *parochia*, in England, meant, up to the time of the Norman Conquest, the Bishop's province, and it is found with this meaning in the writings of

[1] Stubbs: Const. Hist. Eng., Vol. I., pp. 85, 227.

Lanfranc, Anselm and other ecclesiastics, although the smaller district, with its civil and religious organization, must have been in existence.[1]

One result of the Conquest was the conferring upon lords of land the right to found churches on their lands, which corresponded frequently in extent with the old township, and by the end of the twelfth century "the Parochial system, with all its legal apparatus, advowson, presentation, institution, induction, sequestration, etc." had begun to displace the diocesan system. From that time the parish may be considered as the ecclesiastical form of the township, for the boundaries of the parish and the original units were identical, and in later days the personality of the older institution was absorbed into that of the younger. When the people of the township assembled to consider the affairs of the church, the meeting was called a Vestry, from the place of meeting, originally the *vestiarium*, or apartment for clerical garments. Many of the powers and duties of the township were bestowed upon the courts and officers of the manor, and the vestry had to attend to all business, civil as well as ecclesiastical, that did not come under the jurisdiction of the manor. This rule brought about a confusion of the terms parish, vill and town, though the word parish was used generally in referring to church matters. From its beginning, the ecclesiastical side of the parish was inclined to supersede the civil side, and this was the condition of things at the time of the first English settlements in America.

The various classes and kinds of colonists may be, for convenience, considered as divided into two main branches, the first of which was formed of those who settled in New England, whose doctrines and practices have shaped the ideas of what to-day is spoken of as the North, the second consisting of the first English dwellers in the regions south of the present Mason and Dixon's Line, who influenced the South.

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[1] Pearson: Historical Maps of England, p. 58.

Massachusetts may be taken as representing the former, Virginia as a type of the latter. The colonists of Massachusetts, originally members of the Church of England, came to America either out of sympathy with the Establishment, or learned in their new home to cherish another form of church polity. The political unit in the colony was the township. But Parker wrote: "They founded a civil State upon a basis which should support the worship of God according to their conscientious convictions of duty; and an ecclesiastical State combined with it, which should sustain and be in harmony with the civil government, excluding what was antagonistic to the welfare of either.[1] In this union of the State and the Church there was produced an ecclesiastical government which was a combination of Independency and Presbyterianism, and which, in course of time, developed into Congregationalism. Such terms as "Church and Town," and "Members of the Church and Inhabitants of the Town" did not signify, therefore, an English parish, but an English township with provisions for the maintenance of religion. The word parish was used in New England to denote the township from the ecclesiastical point of view, as well as a portion of a township not possessing town rights—but this was not the true English parish. The township of New England was the parish of England, shorn of its ecclesiastical powers; the parish of Virginia was the English parish stripped of some of its civil functions. In Virginia the parish as it existed in England was instituted, although, on account of the peculiar circumstances of the young colony it was, as a local unit, preceded in time of organization by the military and civil divisions, and, in consequence, never possessed civil powers entirely equal to those of the same institution in the mother country. Virginia was settled ostensibly for the purpose of founding an English nation and of propagating Christianity. A minister of the English Church accompanied the men who

[1] Lowell Institute Lectures, p. 403.

succeeded in making the first permanent English settlement in America, destined as years rolled on to become the leader in a defense of English liberties. At first there was little need of church government, as the minister may have been regarded as a chaplain to the Governor. As more men arrived and new settlements were made from Jamestown, the centre, ministers were sent to the most important of them. Then began the coöperation between the Church and the civil power, that had obtained for centuries in the mother country. This was strengthened by the introduction into the colony of the laws "Diuine, Morall and Martiall," by which the Church was taken under the direct protection of the military authorities. The minister chose "foure of the most religious and better disposed as well to informe of the abuses and neglects of the people in their duties, and seruice to God, as also to the due reparation and keeping of the Church handsome & fitted with all reuerant obseruance thereunto belonging."[1] The captain of the watch in the town had to take care that all attended service, and could go in and out private houses to see that no one was neglecting religious duties or profaning the Sabbath by gaming or otherwise. These laws were efficacious in bringing order out of the confusion in Virginia; affairs improved, and the martial discipline fell into disrepute. A

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[1] Force's Tracts, Vol. III., "Lawes Diuine, Morall and Martiall," p. 11; also letter of Rev. Mr. Whitaker, quoted by Neill in his "Notes on Virginia Colonial Clergy," p. 4.

The writer has collected the following statements to prove that the martial law was executed in part at least. Strachey wrote: "I do in the meantime present a transcription of the Toparchia or State of those duties by which their Colonie stands regulated and commanded, first established by Sir Thomas Gates . . . the 24 of May, 1610, exemplified and approved by the Right Honorable Sir Thomas West, Knight, Lord Laware, Lord Governour and Captain Generall, the 12 of June, 1610. Again exemplified and enlarged by Sir Thomas Dale . . . the 22 of June, 1611."—[Lawes, &c., p. 5.] . . . . put in execution by our Lord Generall Laware during his time of one whole yeere of being there."—[Ibid., p. 7.] The planters of Virginia wrote, about 1625, that "Sir Thomas Dale immediately upon

milder and more popular government was established in 1619, and the first Assembly made provision for the Church. Governor Wyatt was instructed in 1621 to "keep up the Church of England as near as may be," and the first acts of the Assembly of 1624 were for the benefit of religion. Places for worship were to be provided in every plantation, penalties were imposed upon ministers or laymen who failed to attend divine service, and the minister was protected against poverty and personal injury. The word *parish* now appeared for the first time in the laws; "there shall be in every parish a publick garnary, unto which there shall be contributed for every planter exceeding the adge of 18 years alive, at the crop after he hath been heere a year, a bushel of corne, the which shall be disposed for the publique uses of every parish by the major part of the freemen."[1] Three men were to be appointed in every parish to see that sufficient corn was planted. From this time on there were various enactments having reference to parish matters, and most of them were reënacted in the Assembly that met in March, 1662, when the country was returning to its normal condition. The laws then made afford, therefore, a favorable starting point for the history of Parish.

The original parishes were laid out in the same manner and often with the same bounds as the old plantations; that is,

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his arrival to add to that extremitye of miserye under which the Collonye from her infancie groaned, made and published most cruell and tiranous lawes, exceeding the strictest rules of marishall discipline, which lawes were sent over by Sir Thomas Dale to Sir Thomas Smith, by the hande of Mr. William Strachey . . . and were returned in print with approbation for our future government as in diuers bookes yet extant more fully appeareth."—[Col. Rec. Va., p. 74.] In Stith's History, which is based partly upon Smith, are the statements that "Marshall Law was then the Common Law of the Country," and that "Sir Thomas Dale being sadly troubled and pestered with the mutinous Humours of the People caused them [the martial laws which Stith elsewhere wrote were 'chiefly translated from the martial Laws of the Low Countries,'] to be published and put into Execution with the utmost Rigor."—[pp 112, 143.]

[1] Hening: Statutes, Vol. I., p. 125.

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they extended many miles along the rivers, but only short distances into the interior. The population was denser in those regions, and the parishes having been designed for the people's benefit, followed them in their migration towards the mountains, and larger parishes were created as the country became less intersected by streams, and, consequently, as settlements were more widely scattered. In many instances county and parish had the same limits and covered immense areas. Thus the parish of Augusta, extending from the Blue Ridge to the Mississippi, was also the county of Augusta. In time the more closely settled counties were divided into smaller parishes, which, in turn, became the basis for new counties. The parish of Cumberland, in Lunenberg county, was divided in 1757, and Cornwall parish formed; in 1761 the original parish lost other territory which became St. James' parish. These three parishes became in 1764 the counties of Lunenburg, Charlotte and Mecklenburg, respectively, though still as parishes, retaining their former names. As this and many similar divisions were made to meet the requirements of new inhabitants, the enactments for the sub-dividing of counties and parishes, may be used as general guides in estimating the growth of population. When the parish church was found to be in a situation inconvenient for many parishioners, the Assembly was asked to allow a division of the old parish, and the inhabitants chose sometimes the men to run the lines. For some years parishes sent representatives to the House of Burgesses; afterwards this practice was allowed only when the parish had special measures to advance, and finally it ceased altogether, as it caused great and needless expense. In 1662 power was given to the counties and the parishes to make by-laws, which were to provide for circumstances to which a general law could not apply, and which, once made by the majority of the voting inhabitants, were binding upon all. But this arrangement did not succeed; so in 1679 it was enacted that, instead of each parish making its own by-laws, it should elect two representatives to sit with the justices of the county

court, in order to make by-laws for the welfare of the *county*. In this way the parish lost one of its principal powers of local government. Occasionally one discovers that courts of justice were held for the parish, but this was done by the appointment and under the guidance of the commissioners of the county court, who resided in the parish, and the custom was instituted to save people the trouble and expense they would have incurred in attending the regular county court.

Frequently in large parishes chapels of ease were erected, where services were held alternately with those at the "mother church." It would be interesting and instructive to study church architecture in Virginia, from a time when the Rev. Mr. Hunt preached under an old sail stretched over some poles, until the church in Williamsburg, "adorned as well as any church in London," had to be enlarged to accommodate the wealth and fashion that thronged the capital during the sessions of Assembly, or, as it was expressed earlier, because "the Parishion" are very much straightened & often outed of their places & seats, by dispencing with & allowing room for the frequent resort of strangers."[1] But the limits of this paper will permit only the briefest outline. The general rule adopted in building a church was to make it in the form of a cross, having the chancel at the east end and the pulpit on one side or at a corner. The pulpit was a huge affair, decked sometimes with a cloth of gold or purple, and towering above the high-backed pews or benches in the church. Some people, considering it due to their social position that they should have lofty seats at church, constructed little galleries along the side walls, and there they proudly worshipped.

Church then, as now, was often attended from motives other than religious. From early morning until service the parishioners might have been seen assembling from all directions, on horseback, in lumbering coaches, or, when the church was near the water, in boats. Young men arrayed in cos-

[1] Palmer: Calendar of Va. State Papers, Vol. I., p. 145.

tumes made after the latest London styles, crowd around some favored belle in high heeled boots, flounces and furbelows, and vie with each other in attempts to fascinate. Others stand around gossiping, arranging for business or pleasure in the future, or concocting schemes against the minister, whom they perhaps think has made rather personal remarks in his sermons. The shadow grows smaller on the dial-plate, the ancient sexton rings the bell and the people file into the church, where they are assigned seats by the church wardens, who have to see that all have places suited to their station, and, with the sheriff or other officers, prevent the worship from being disturbed. If it is an outlying church, the men who have brought their arms deposit them at the pew door, where they themselves sit ready at a moment's notice to rush out against any prowling Indian or wild animal. During the service the slaves bask in the sunshine outside, upon the plea of watching the horses or equipages, or they nod away in a retired nook of the church, utterly oblivious to what minister or clerk may be saying. It was customary for the clerk to read parts of the service, to make the responses and to "set the psalms," for it was a long time before organs were introduced into Virginia. The minister's sermon may have been edifying, but it was seldom calculated to arouse the ire of the hearers. This, however, was not always the case. One minister, who had some altercation with members of his vestry, and succeeded by sheer force in defeating them, preached at the next service from a text that expressed exultation at his victory. Another, having been locked out of church, delivered his sermon in the graveyard.[1]

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[1] "And I contended with them, and cursed them and smote certain of them and plucked off their hair." Meade: "Old Churches, &c.," Vol. I., p. 18. The Rev. Mr. Kay tells his own story: "An order of Vestry was signed by seven Vestrymen to discharge me and lock up the doors and Nail up the pulpits, Reading desks and windows of both churches which they did; and he himself with the other Six Vestrymen the next Sabbath day's forbad me and the Congregation to enter the Church, but at one of my churches

The church door, in accordance with an old English custom, was the place for advertising business of every kind, from a notice of a person's leaving the country, to the crying of hogs, boats, &c., that had been found astray. Either during or after service the minister or clerk published banns, read the Acts concerning adultery, &c., and gave notice of elections for the House of Burgesses. From necessity, or from carelessness or indifference a surplice was not always worn, and there was much laxity in ceremonies. A traveller to Virginia, in 1715, wrote that, "after the minister had made an end every one of the men pulled out his pipe and smoked a pipe of tobacco."[1] Whether this was the custom everywhere is not known, but it is suggestive of the good fellowship existing among men who enjoyed few such opportunities for counterbalancing the evil tendencies connected with their usual segregated life.

The minister who faithfully discharged his duties, represented a bond of union among the parishioners. But, sad to relate, the ministers who came to build up the Church in Virginia were not, as a rule, the best that the mother country had produced. To be sure, there were Latané, Hunt, Whitaker, Maury and a host of others, all pious and energetic laborers, but the temptations to neglect tasks and obligations were sometimes too great for clergymen who had been sent to America in the hope that in the purer atmosphere and surroundings of the virgin colony they would turn from evil ways. The bad character of the clergy had a great deal to do in fomenting and keeping alive, from 1662 to the outbreak of the Revolution, a dispute about the right of presenting ministers to vacant parishes. To allay the troubles the question was carried to England, and Sir Edward Northey delivered an opinion seemingly in favor of the parishes, but its meaning

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where were many of my friends they forced him and his six away, broke open the doors, pulpits and desks, and conducted me in." Papers Relating to the History of the Church in Virginia, p. 389.

[1] Maury: Memoirs of a Huguenot Family, p. 261.

was misconstrued by the authorities in Virginia, who foolishly endeavored to foist ministers upon unwilling vestries.[1] It must be confessed that some vestries were so controlled by the Governor as to carry out his behests. But the majority were so steadfast in maintaining their rights that they preferred to employ lay readers, and often turned away worthy men from a fear of seeming to yield. In some cases their actions were entirely inexcusable, and brought men under suspicion of diverting parish funds to their personal use. One vestry objected to a minister who had faithfully fulfilled the duties of his office many years, because of "a small Tang of the French" that rendered his speech unintelligible in the pulpit, but was no impediment to their understanding him when he asked them, as a test, to drink with him. Occasionally the Governor recommended a minister to a vestry, who accepted the candidate, if he upon trial gave satisfaction.[2] The vestries no doubt recognized the right of the Governor to induct a minister into a parish, that had remained vacant over twelve months, but they evaded the law by employing their rectors for a year at a time, and then if he showed that he appreciated the situation they continued to hire him, or presented him to the Governor for induction.

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[1] The decision given in 1703 may be found printed in "Papers Rel. to the Hist. of the Ch. in Va.," p. 127.

[2] The following extracts show how the Governor and the vestries acted. These are copied from Bishop Meade's work.

"WILLIAMSBURG, *April* 26, 1745.

"*Gentlemen:*—As your parish is at present unfurnished with a minister, I recommend to your approbation and choice the Rev. Mr. Scott, who in my opinion is a man of discretion, understanding, and integrity, and in every way qualified to discharge the sacred office to your satisfaction. I am your affectionate friend and humble servant, WILLIAM GOOCH."

Vol. II., p. 208.

"Ordered, that Mr. Vicaris the present minister, continue in his charge, and exercise his ministerial functions until the next shipping, in hopes of his future amendment, he declaring his willingness then to leave the place if not approved by the precinct and vestry." Vol. I., p. 324.

In the early years of the colony ministers were supported by an annual levy of ten pounds of tobacco and a bushel of corn for each person who tilled the ground. In 1632 their salary was increased by the payment of the "20th calfe, the 20th kidd of goates, and the 20th pigge," which Hening called "tithes,"[1] and in 1690 it was fixed at not less than sixteen thousand pounds of tobacco yearly, and this was paid, until the Revolution, by most parishes. In certain counties, where little tobacco was raised, people were granted the liberty of paying their parish and other dues in money, and in 1758 an attempt was made to grant the same privilege to all. This greatly increased the contest between clergy and laity, and many objections then advanced were satisfied only by the war for independence. Quite frequently the minister, in accepting a parish, took into consideration the quality of the tobacco cultivated, and it is amusing to read that this parish was "Sweet-scented" or that one "Oronoco." To tell what kind of tobacco was the better, it is only necessary to say that the "Oronoco" parishes were more frequently vacant.

Two hundred or more acres were bought by, or given to, the parish for a "glebe." On it were erected a dwelling-house, negro quarters and a kitchen. Sometimes the necessary slaves and stock were supplied. The Rev. Duell Read, when he vacated his parish in order to return to England, gave "four milch cows and calves, four breeding sows, a mare and a colt to be delivered on the glebe of said parish to the next incumbent." Certain members of the vestry had years before agreed to "mark one cow calf with a crop in the right ear, to be kept as well as their own cattle until they be two years old, then given to the vestry as stock for the parish."[2] It was the duty of the incumbent to keep up the glebe land, but unless a well disposed vestry chose to relieve him, he either ruined the ground by successive crops, so that a new glebe had to be pur-

[1] Hening: Statutes, Vol. I., p. 159.
[2] Meade: Old Churches and Families of Va., Vol. I., p. 359.

chased, or he allowed the whole property to run to waste. There were few, if any, parochial libraries for the benefit and entertainment of the minister, and, indeed, books would have been of small value to many of the clergy, whose spare moments were occupied in drinking bouts and the usual accompaniments, in answering charges before the county court or the Governor, or in gadding about in quest of anything to relieve the monotony of their life, thus in all respects equalling their brothers in England. A baptism, wedding or burial was hailed as a blessing, save when a long journey on horseback had to be undertaken. Such ceremonies were made occasions for the assembling together of friends and neighbors. John Washington quaintly wrote in 1659 that he was unable to attend a court at St. Mary's, in Maryland, because "All ye company and gossips being already invited" to witness the baptism of his son, he had to be present to receive congratulations and to perform the agreeable honors of host. Forty shillings were paid for the delivery of a funeral sermon, "which," wrote Hugh Jones, "most of the *middling People* will have."[1] In large parishes it was customary for individuals to have private burial places, though many bodies were buried in the churchyard, and sometimes by permission of the vestry in the church; and it was not unusual for a faithful rector to be laid to rest within the chancel, where he had ministered. As people had to journey from afar to attend funerals, a meal was prepared for the guests, at which occasionally some were overcome by their potations.

The duties of the clerk who assisted the minister were multifarious. In the absence of the rector he could perform all the offices of the Church, except matrimony and the two sacraments, he sometimes published banns, catechised the children and ignorant persons, kept a record of all births, marriages and deaths, sometimes acted as clerk of the vestry and collector of parish levies, and saw that all leaves and other rub-

[1] Hugh Jones: Present State of Virginia, 1724, p. 72.

bish were cleaned away from the church yard. But minister and clerk seemed to sink into insignificance before that august and closely organized body, "the twelve lords of the parish," the Vestry.

In 1643 a law was passed requiring a vestry to be held in every parish, for the care of the church, laying of levies, &c., and "That the most sufficient and selected men be chosen and joyned to the minister and church wardens to be of that Vestrie."[1] The number of vestrymen varied, and, even after the law of 1660, limiting the number in each parish to twelve, had been passed, there was some irregularity. Thus in 1707 a dispute in Charles parish, York county, revealed the fact that there were eight vestrymen in each of the two precincts, that then formed the parish. The vestrymen were elected by the freeholders and householders "paying Seatt and Lett in the parish." The sheriff presided at the elections to prevent all riotous proceedings, to receive the vote, an account of which he transmitted to the Council. Vestrymen were chosen for an indefinite term, although the Assembly during Bacon's regime tried to reduce their time of service to three years at a time, and thereby to obviate evils resulting from long tenure in office; for vestries filled vacancies in their own body and could be dissolved only by Act of Assembly. Many of the renowned sons of Virginia were at one time or another vestrymen, and it is recorded that Washington was a member of two vestries at the same time. Vacancies seldom occurred except by removal, by death, or from old age, which necessitated a withdrawal from the public service. Some made the office of vestryman a step towards obtaining political honors. The House of Burgesses was often controlled by men who were also vestrymen, and Bishop Meade ventured the statement, founded upon careful study, that in the Virginia Convention of 1776 there were not three persons who did not hold that office. The newly elected vestrymen took the oaths of supremacy,

[1] Hening: Statutes, Vol. I., p. 240.

allegiance, abjuration, &c., and subscribed the test. There are many objections made to long continuance in office, but it must be acknowledged that a man, who had done his duty as vestryman for perhaps thirty years, was preëminently qualified by long experience and matured knowledge to conduct and instruct younger men in parish affairs. In many cases the office descended from father to son, by no right save that of merit or of inherited influence.[1]

The vestry met at least twice a year at the church, vestry-house, or convenient private dwelling. At the Easter meeting church-wardens were appointed and the accounts of the preceding year examined. The meeting in the fall was for the purpose of apportioning the annual levy. At that time the various expenses of the parish, including the minister's salary, provision for the poor, &c., were added together, and the whole amount, divided by the number of tithables, determined how much each had to pay. The minister and poor or infirm persons were excused from paying tithes. Some items in the list of parish expenses are very amusing, as, for instance, "Ord'd. That the Ch. Wd's agree with any person for the Cure of Pridgeon Waddle's Nose—not exceed'g ten pounds."[2] From another it is discovered that two quarts of brandy were required for the burying of a poor woman, and there are many showing how paupers were kept and treating of the binding out of orphan or bastard children. Often persons took care of their own children at the parish expense, and one entry states that fifteen hundred pounds of tobacco were paid a woman "for Mary and Susanna

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[1] The writer of an article in the "Century," (Vol. XXV., p. 180,) would probably call such an arrangement perfect. In speaking of the officers of the Supreme Court he makes the extraordinary remark, "An excellent civil service system prevails among the minor employees, some of whom are the sons and grandsons of former clerks and messengers. The strife for office, which is one of the greatest evils of public life in this country, has never invaded the precincts of the Supreme Court."

[2] Brock: Vestry Book of Henrico Parish, p. 140.

Jeffs, children of Sarah Jeffs, in full for the time she has kept them, and to indemnify the Parish from all charges for keep'g and Bringing up the said children for the time to come, they being now bound Apprentices to her."[1] The vestry appointed collectors of the levy, who gave bond and received a fee of ten per cent. The church-wardens usually served in this capacity, but frequently the sheriff or a special collector.

Once in every four years the vestry, by order of the county court, divided the parish into precincts, and appointed two persons in each precinct to "procession" the lands. These surveyors, assisted by the neighbors, examined and renewed, by blazing trees or by other artificial devices, the old land-marks of the fathers, and reported the result to the vestry who recorded the same in the parish books. This proceeding, similar in many respects to the ancient custom of perambulation in England, was instituted for a similar purpose, and was absolutely necessary for preserving boundaries in a country where few fences were used except to protect the house-garden or to keep hogs and other live stock from running abroad.

The vestry had also to provide for the maintenance of the poor. In the most flourishing days of the colony it was an easy matter to find accommodations in private houses for the few indigent folk of the parish, especially as the vestry paid for their keeping from the proceeds of the levy or of lands and other property bequeathed to the parish. The poor had to be supported by the parish where they lived, and if they wandered into a strange parish, they were conducted back to their own by a constable. Children, whose parents were unable to bring them up properly, were bound out by the vestry. The persons to whom they were apprenticed promised to instruct them in religious principles, and the "art and mystery of some trade," while the children, on the other hand, were bound to do all they could for their master's welfare, and to avoid all the temptations to evil that tippling houses or

[1] Ibid., p. 144.

taverns were supposed to offer. But the element in Virginia character and Virginia laws, that tended towards the accumulation of wealth in the hands of a few, naturally resulted in course of time in an increase in the number of the poor. In 1755 a law was passed, which, if rightly administered, would have remedied many evils. Workhouses were to be built in every parish, where poor persons and vagrants were to be employed at something that would help to maintain them. The vestry had the right of making regulations for its workhouse, and all offenders against the rules were to be whipped. The most obnoxious requirement was that the poor should have some distinguishing badge. This measure was not generally successful and the record books still show that the old system continued in force. There were, however, some exceptions. The vestry of the upper parish of Nansemund county expended the proceeds from a sale of lands and stock in building a "house for the reception of divers poor persons, who receive relief from the said parish, and for educating and maintaining several poor children,"[1] and also made rules for its government. But during the Revolution it was such a difficult matter to collect sufficient funds to pay parish charges, that in 1778 the vestry was ordered to sell the old workhouse and grounds attached, and to devote the amount realized to lessening the levy. In some parishes were free or charity schools, of which the minister, vestrymen and wardens were the trustees, and they appointed masters who taught "English and Writing." Sometimes, for pecuniary reasons, the minister kept a school at the glebe house, or acted as tutor in a private family. Vestrymen were not allowed to act as lay readers, but some, resigning their office, went to England to study divinity, and, having been admitted to orders, returned to officiate in their own parish. The vestry was aided and represented in most of its relations to parishioners by the church-wardens.

[1] Hening: Statutes, Vol. VI., p. 519.

Church-wardens existed in Virginia before vestrymen. The four assistants to the minister during the martial government were probably their prototypes. Mention is first made of them in the record of the proceedings of the first Assembly, but nothing is said about the manner of appointing them. In 1632 it was ordered that they be *chosen*, probably by a meeting of all the parish, for, up to that time and even later, there was no need of a representative vestry, as most of the parishes were confined to the small plantations lying in the vicinity of Jamestown, and so all inhabitants were within easy access of the place of worship. Though the church-wardens preceded the vestry as historic factors in Virginia and as regards some duties, yet after select vestries had been organized they appointed their church-wardens as their agents for disbursing parish funds, communicating with the Governor, or for attending to various other matters, which engaged their attention or appertained to their office. When parishioners failed to elect a vestry, the county court appointed the church-wardens and sometimes sidesmen to assist them. The minister and vestrymen chose annually from their body two church-wardens. The election was held at Easter and the retiring wardens had to give an account of all their dealings before they were discharged. Some vestries re-appointed one of the wardens who had served a year, that he might act as counsel to the newly chosen one. This was an excellent idea, as it no doubt prevented many annoyances that would have resulted from inexperienced persons taking entire charge of affairs, and it may have had some connection with the later distinction between Senior and Junior wardens, but it gave neither warden greater power than the other possessed, and both were supposed to work in concert. The oath required of them gives a general view of their duties and will, therefore, be quoted at length: "You shall sweare that you shall make presentments of all such persons as shall lead a prophayne and ungodlie life, of such as shall be common swearers, drunkards or blasphemers, that shall ordinarilie profane the sabath dayes or contemne

God's holy word or sacraments. You shall also present all adulterers or fornicators, or such as shall abuse theire neighbors by slanderinge tale carryinge or back bitinge, or that shall not behave themselves orderlie and soberlie in the church duringe devyne servise. Likewise they shall present such maysters and mistrisses as shall be delinquent in the catechisinge the youth and ignorant persons. So helpe you God!"[1]

While the people lived near each other the wardens could have easily carried out these injunctions, but when population had scattered and great rivers had to be crossed and long stretches of forest penetrated to reach all, they were impeded in their labor, which was in the main disagreeable. So they were assisted by the grand jury of the county, who often excelled them in ferreting out and bringing to justice lawbreakers, though legal quibbles or the difficulty of obtaining enough proof frequently prevented conviction. At one time the following tests were proposed for determining when a minister had become drunk, which would have applied to laymen equally as well. "Sitting an hour or longer in the company where they are drinking strong drink, and in the meantime drinking of healths, or otherwise taking the cups as they come round like the rest of the company; striking and challenging, or threatening to fight, or laying aside any of his garments for that purpose, staggering, reeling, vomiting, incoherent, impertinent, obscene, or rude talking,"[2] all these were good evidences that the brute had conquered the man.

The church-wardens collected and disposed of the fines for drunkenness, Sabbath breaking, neglect to have children baptized, absence from church, &c. In some parishes stocks were ordered to be built for the accommodation of those disorderly characters, whom the wardens had to remove from church to prevent them from disturbing the worship or slumbers of members of the congregation. Stocks seem to have been a

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[1] Ibid., Vol. I., p. 156.

[2] Papers Rel. to the Hist. of the Ch. in Va., p. 342.

favorite means employed for the punishment of offenders of all grades. In 1633, a man was ordered "to make a pair of stocks and sit in them several Sabbath days during divine service, and then ask Mr. Cotton's forgiveness, for using offensive and slanderous words concerning him."[1] Mortifying as this penalty must have been it did not approach, in severity, one imposed at an earlier period. A resident of Bermuda Hundred, who had vilified a gentleman, was sentenced "to have his tongue run through with an awl," to pass through a guard of forty men, each of whom was to butt him, and when he had reached the last in the line he was to be "knocked down and footed out of the fort." By these and other similar extreme measures was enforced reverence for those in authority. Bishop Meade tells of persons, who were compelled to stand during divine service, with marks of humiliation about them, and of a woman who was condemned to suffer twenty lashes upon her bare shoulders. Even those who concealed the fact of slander, which had been uttered, were whipped or imprisoned. Severe as were these penalties, they were suited to the times and exercised a wholesome influence over the restless spirit of the early colonists.[2]

The minister and church-wardens took cognizance of persons who fornicated or committed adultery. If, after proper admonition, the bad conduct was continued, the guilty parties were presented in court. In 1627 the wardens of Stanley Hundred presented a man for incontinency with a woman, whose husband was away, and the court ordered a separation.

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[1] Quoted by Neill and Meade from the court records of the later Accomac county.

[2] "March 25th, 1630, Tho. Tindall to be pillory'd 2 hours for giving my L'd Baltimore the lye & threatening to knock him down."

"1640. Stephen Reekes put in pillory 2 hours with a paper on his head expressing his offence, fined £50 sterling and imprisoned during pleasure for saying that his majesty was at confession with the L'd of Canterbury." Extracts from the Minutes of the Proceedings of the Governor and Council of Virginia, by Hening: Statutes, Vol. I., p. 552.

If a white man had improper relations with a negro woman, she was whipped, while the man was sometimes whipped, and frequently compelled to acknowledge his fault in church, that is, to do penance. Unnecessary travelling, "fowling," and any gathering but for worship on Sundays were prohibited, and the church-wardens in trying to prevent them, and in urging people to attend church, assumed the duties of the ancient captain of the watch. Persons who failed in their religious obligations were fined for the benefit of the poor of the parish. One man was presented for "driving hogs over the mountains on the Lord's Day," others for playing cards, pitching and playing, and some for cursing and swearing. Though there were instances of tumultuous proceedings in church, the services were generally conducted in an orderly manner, and summary punishment was inflicted upon unruly persons. A certain person was excommunicated for forty days because he put on his hat in church, but one who had committed such an offence probably cared very little about the loss of the privilege of attending worship. Notwithstanding the efforts of law-givers and vigilance of authorities many immoral actions were unpunished, and nothing else was to be expected from private individuals, when their own spiritual guides were themselves not altogether above suspicion. One well meaning individual left by will £100 to the vestry of his parish, who were to give the interest to the minister, on condition that he should preach four times yearly on the four cardinal sins of the community, and to make sure that there should be hearers, the interest of £25 more was to be divided between the clerk and the sexton if they were present when the sermons were delivered. One of the ministers who afterward enjoyed this legacy, it is said, could have brought a great deal of personal experience to light as illustrative material for his sermons.

The church-wardens had to bind out foundlings or bastards. Heavy penalties were imposed for bastardy, and if the woman refused to pay her fine, she could be sold for five years

by the wardens. The father had to remunerate the parish for any loss attending the care of the child, for the wardens paid some one to raise the unfortunates, and occasionally the mother consented to do so. In the vestry book of Henrico parish it is recorded that a woman was paid for keeping her two illegitimate children, and numerous other cases are mentioned. But in dealing with offenders against morality the grand jury gradually supplanted the church-wardens, who busied themselves chiefly in caring for the poor and in attending to matters more closely belonging to the church. They sought out impotent and needy persons, and either paid for their accommodation in private families or sent them to the work-house. They employed doctors to visit them in sickness and provided the necessary funds to have their bodies decently interred by the sexton, who, besides keeping the church and grounds in order, generally had charge of funeral arrangements. The wardens called vestry meetings, where they sometimes took precedence of the minister. In 1755, an imposter, who claimed to be the son of the "Duke of Wirtemberg" and a minister, went about the country and deceived vestries into employing him. The Governor, therefore, issued an order bidding church-wardens not to allow any one to officiate in their churches, unless he could prove that he was a regularly qualified clergyman.[1]

It must not be supposed that this was an expression of opposition to dissenters, for after the troublesome dissensions of the seventeenth century had abated—mere shadows of the dissensions in the mother country—Quakers, Presbyterians and other bodies of Christians not in accord with the doctrines and practices of the Established Church were tolerated in Virginia. A whole parish was given to French refugees, who enjoyed there for many years their own customs and modes of worship; the settlers at Germanna were granted similar privileges. Whitfield preached in Blandford church; Davies, in defending

[1] Virginia Gazette, February 28, 1755.

the cause of dissenters before the general court, charmed many and excited the admiration even of his enemies by his manly utterances and glowing eloquence. Many of that ilk attracted large congregations in parishes left vacant by reason of their distance from the capital, or because the tobacco raised there was of a quality inferior to that growing in the parishes situated between the York and the James rivers.

Church-wardens had charge of the decorations of the churches and made preparations for the celebration of communion, which was administered three times at least during the year, generally at the great feasts, and sometimes to the congregation in their pews, though this was not considered orthodox. At one time the minister and wardens reported to the Governor and Council the number of births, marriages, christenings, and deaths that had occurred in the parish, but after county courts had been instituted, the clerk appointed by the vestry kept a register of such events, and transmitted it annually to the court. There were passed a great many laws which defined the duties of church-wardens and vestrymen, but it has been thought best to refer to those only which, it is known, were executed; the character and the signification of the rest may be summed up in a few words. The parish in Virginia was a development, and changes were introduced now and then with a design of reproducing the old English customs, or of meeting some necessity peculiar to the new country, so that in social, civil, and religious relations Virginia resembled, more strikingly than any of the other American colonies, the prominent and superior side of old England. But a great deal of looseness prevailed, which the arrival of commissaries failed to remedy. Commissary Blair himself wrote that such difficulty was experienced in obtaining enough ministers for the colony, that for fear of losing those already there, many offences among the clergy were forgiven or else entirely overlooked.

Meanwhile events were hastening, and the time was near at hand for a struggle, that was to produce a nation. The

vestries for a century had contended that those who supported ministers and founded churches had the right to decide who should enjoy their contributions. With this idea deeply rooted and constantly in their minds, it was very easy to advance to the feeling that they should resist attempts to tax them without their consent. Within less than three months after the royal assent to the obnoxious Stamp Act, Patrick Henry, who two years before, as advocate of a vestry against a minister, had declared himself an opponent to tyranny in any form, offered those famous resolutions, which alone would have rendered his name immortal. Among those who were associated with Richard Henry Lee in the address and resolves of the patriots of Westmoreland against the use of the stamps, were many who had without doubt imbibed and developed their independent notions while filling the office of vestryman. A feeling of unrest gradually affected all classes, and was reflected in the doings of vestries. They became careless, and allowed dissenters to be elected into their number, while some were dissolved for misappropriating the poor rates, and others on account of illegal elections. Attacks against the Establishment grew stronger, and were made more frequently. In 1776 an Act was passed, whereby all dissenters were freed from contributing towards the salaries of clergy belonging to the Church of England, but the churches, glebes, and other property remained in possession of the vestries. As the vestries in several counties were dissolved, the care of the indigent devolved upon the overseers of the poor. When the Revolution began, churchmen, dissenters and all united in bearing arms for the common cause. Even some of the clergy, by nature conservative, resigned their cures, and entered the army as chaplains. One must be mentioned who, though not a member of the Established Church, was closely affiliated to it. He is known to the world as General Muhlenburg. A German by descent, a Pennsylvanian by birth, and a Virginian by adoption, he soon developed talents, which made him a leader in his county. Bishop Meade has

written a graphic account of his last sermon, which was a glowing appeal to resist oppression. He "concluded with the words that there was 'a time for all things;' a time to fight, and that time had now come. The sermon finished, he pronounced the benediction. A breathless silence brooded over the congregation. Deliberately pulling off the gown which had thus far covered his martial figure, he stood before them a girded warrior, and descending from the pulpit, ordered the drums at the church door to beat for recruits."[1]

Men had little time or inclination during the Revolution to busy themselves with church affairs, and the opponents of the Establishment had frequent opportunities still more to undermine the tottering structure. One by one the powers of civil authorities were taken from the vestries, and the inroads against ecclesiastical possessions culminated in the grievous Act of 1802, that threatened to destroy, and which most certainly did great damage to the Episcopal Church in Virginia. But opposition from without, internal dissensions and the separation of State from Church, aimed at in the new constitution, brought it to pass that the parish as a political institution perished in a struggle whose birth it had so greatly aided.

[1] Old Ch. and Fam. of Va., Vol. II., p. 314.

V.

COUNTY GOVERNMENT IN COLONIAL VIRGINIA.[1]

In the second charter to the Virginia Company the Governor was authorized "to use and exercise martial law in cases of rebellion or mutiny, in as large and ample manner as our lieutenants in our counties within this realm of England."[2] This sentence calls attention to the difference between the settlement of New England and that of Virginia. Many of the early settlers of New England had been townsfolk, or easily adapted their mode of living to the township idea, which was necessary among so few to insure mutual protection and assistance. The transfer of the governing power to the colony and the nature of the country still further strengthened the natural tendency to reproduce the older and smaller local independencies of the home-land. The settlement of Virginia, however, seems to have been conducted upon another principle. The clause in the charter, which conferred upon the Governor the powers of a county lieutenant, indicates that it was designed for the colony to become in the

[1] This chapter appeared originally in the MAGAZINE OF AMERICAN HISTORY, December, 1884, and is republished with the kind permission of the editor, Mrs. Martha J. Lamb.

[2] Hening's Statutes, Vol. I., p. 96.

course of time a kind of county dependent, through the Company in London, upon the Crown. From certain circumstances, similar in many respects to those which later affected the northern colonists, a small local life was absolutely required in Virginia, but this did not continue for any great length of time. As more colonists arrived they extended their settlements over the fertile country by means of its natural highways, the rivers, that had for ages been preparing the soil for easy cultivation by rich alluvial deposits. Little by little the new comers subdued or pacified by force or policy the original proprietors, and, encroaching upon the wilderness, amassed large estates, which were destined to become greater on account of the system of entail and primogeniture that, as some writers assert, was developed in Virginia to a higher degree than in England itself. With the retreat or extermination of the Indians disappeared the necessity of living in or near small fortified hamlets, and, as population spread over wider territory, the town broadened into the county, and people, institutions, soil and climate began to exercise upon each other a modifying influence, the result of which was Virginia of the Revolution. Imbued by birth or training with aristocratic notions, Virginia's founders allowed them full play in the land of their adoption, where there was no controlling class above or below them, and where every circumstance favored them. Where almost every extensive plantation had its own "landing," and the planter was his own factor and possessed and trained his artisans, there were no reasons why towns should be built. Even when attempts to lay off towns in every county were made, they were delayed and resisted upon the plea that tobacco culture would be hindered. The consequence of a small population scattered over a large area was that the county obtained predominance as a political unit, though smaller divisions retained a *quasi* recognition. A brief review of the history of the first fifteen years of the colony will show, in some degree, the causes of the origin and growth of the county system.

When one considers the relation of Virginia to the English crown, after the dissolution of the Company, that had controlled their affairs for economic purposes, he sees the Governor representing the King, the law, and to all intents the Church. This was a great advance upon the idea of an agent for a company, or of a county lieutenant, and the change in the attributes of the Governor had been brought about by the increase of population and wealth in the colony, and the consequent subdivisions of power, all concentrated into the Governor's hands.

After a few years' experience the mere merchant-venture, with its servants, tools and provisions in common, was found to be impracticable. Community of goods under the most favorable of circumstances has resulted in poverty or disintegration. What was true about many later pure communistic experiments was equally true in regard to the attempt in Virginia. Many of the adventurers, unused to manual labor, took it for granted that they would be fed from the common store; consequently they were not incited to make very great efforts for their own support, but were glad of any opportunity that might enable them to shirk work. The result was that they not only did not produce enough to repay the outlay of the Company, but were often hard pressed to provide food for themselves. Sir Thomas Dale hit upon a half plan to remedy this evil, *i. e.*, granting to each man three acres of land. The institution of private property in land, however greatly it may be deplored by modern socialists of the Henry George ilk, although imperfect, gave the colonists a feeling of permanence suited to their English instincts and encouraged a man to depend upon his own resources. A man could thus see his labor affecting directly himself, and, as land may be justly considered the basis of all property, it is not surprising that there soon began to be material comfort and a degree of prosperity which, in spite of set-backs from Indian wars and internal struggles, caused Virginia to be regarded as the granary of the North. The allotment of fifty acres

for each person brought into the colony gave it greater stability, and the people, having obtained a basis for operations, began to be restless under military rule, and, true to education, to desire a government more akin to English law and practice. The Company thought fit to acquiesce in this desire, and accordingly sent back, as Governor, Sir George Yeardley, with instructions to summon a body to make laws for the colony. In answer to his summons there assembled in the church at Jamestown, July 30, 1619, the first English legislative body in America. The members of the Assembly, as it was afterward called, sat together in the church, the Governor and Council occupying the choir or chancel. The larger portion was composed of twenty-two burgesses—two elected from each of the various hundreds, plantations or corporations situated along the Powhatan or James river, from Henrico to the Bay, and even from the small settlement in Accomac. The representative idea was expressed in the beginning, and did not, as later in Maryland, develop through the proxy system. As this Assembly was most important as marking an era in Anglo-American history, and as the body afterward represented the counties taken collectively, it may be well to treat the topic at this point.[1]

This primitive Assembly first turned its attention to the qualifications of its members. Captain Warde's seat was disputed and objection was raised against Captain Martin's burgesses. Warde was admitted, but the burgesses of Martin were excluded, because he refused to yield the claim in his patent, exempting him and his followers from the laws of the colony's charter. On Monday the laws which had been made

[1] Mr. Arthur Gilman, in his "History of the American People," p. 601, states that "The documentary basis of the Representative government established by Governor Yeardley in Virginia has not been preserved." This is surely a mistake, for the Virginia Historical Society published, some years ago, under the supervision of Messrs. T. H. Wynne and W. S. Gilman, the records of this Assembly, with an account of the discovery and the transcription of the MSS. in England.

up from the instructions to Yeardley and his two immediate predecessors were passed; religion, morality, relations with Indians, planting, manufacturers, were provided for. On Tuesday the Assembly sat as a court to try Thomas Garnett for indecent behavior, and he was sentenced by the Governor "to stand fower dayes with his eares nayled to the Pillory . . . and euery of those fower dayes should be publiquely whipped."[1] After passing more laws on Wednesday, trying Henry Spelman for endeavoring to stir up trouble among the Indians, and providing salaries for the speaker, the clerk, and the sergeant, the Assembly was prorogued by the Governor.

Although many things may have been said and done contrary to laws and customs of England, the Assembly should always be studied with great interest by the constitutionalist and historian, for with it began the real prosperity of Virginia, which encouraged the planting of other settlements in America. The laws which were enacted were characteristic of the men and of the times, and the Company in London could abrogate them, although it was petitioned that they might pass current until the Company's further pleasure was known. The growth of the Assembly is a question rather of constitutions than of institutions, but the relations of the county to it after it had become determined cannot be omitted in this paper. When the Governor called an Assembly, burgesses were elected from each county and from some parishes. The number allowed to each county was for a time indefinite, and was probably reckoned according to population. But in 1660 the number was reduced to two for each county and one for Jamestown, it being the metropolis, and the right of representation was afterwards conferred upon the boroughs of Williamsburg and Norfolk. The election was held at the court-house, and the sheriff presided and took the votes which freeholders cast, and those who were

[1] Colonial Records of Virginia, 1619–80, p. 24.

absent from the poll were liable to be fined.[1] "All voted openly and aloud without the intervention of the sneaking ballot. The candidates sat on the magistrates' bench above. The sheriff stood at the clerk's table below; called every voter to come, and how he voted. The favored candidate invariably bowed to the friend who gave him his vote, and sometimes thanked him in words. All over the court-house were men and boys with pens and blank paper, who kept tally, and could at any moment tell the vote which each candidate had received . . . The election over and the result proclaimed by the sheriff from the court-house steps, forthwith the successful candidates were snatched up, hoisted each one on the shoulders of two stalwart fellows, with two more behind to steady them, and carried thus to the tavern . . . where there was a free treat for all at the candidate's charge."[2] This is an account of an election in the beginning of this century, and it may be considered as characteristic of others earlier and later. The old time practice of marching in squads to the polls is still continued, if reports regarding the election of 1883 in Virginia are true. The people took great pride in sending a clever man to the Assembly, and expected him to look after his county's interests before those of the colony or of the crown. Such remarks as "I expect we shall have another election, as I am certain Mr. T—— will not be allow'd to take a seat in the house, where none but gentlemen of character ought to be admitted," show the sentiments of high-minded Virginians about their representatives.[3] Before going to the Assembly the burgesses received

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[1] The qualifications of voters were for some years shifting, but at last settled down to freeholders, and at the beginning of the Revolution the voters were those "possessing an estate for life in 100 acres of uninhabited land, or 25 acres with a house on it, or in a house or lot in some town." Jefferson: Notes on Virginia, p. 160.

[2] W. O. Gregory: from the Farmer and Mechanic of Raleigh, N. C., in the Baltimorean, Oct. 27, 1883.

[3] Bland Papers, Vol. I., p. 12.

the wishes and complaints of their constituents, and upon their return were wont in later times to report upon their own actions and the proceedings of the Assembly, which was composed of burgesses and the members of Council, who after 1680 sat as an upper house. Burgesses were free from arrest during its sessions, and were paid by the county which sent them. The Assembly, which was often called to pass acts favorable to the Crown or its representative, the Governor, seized every opportunity to strengthen its rights—for instance, the power of laying taxes in the colony, which has always been deemed an assertion of the right of self-government.

Notwithstanding the instructions to Governors for setting up various forms of government in the colony, no county was created before 1630. The unsettled state of the public mind on account of fears of assaults from the Indians, who hovered about outlying plantations, ready to fall upon the unprotected, and the gathering together of people into "great families," after the great Indian massacre, caused extensive powers to be granted to the commissioners of the plantations, and in those persons were combined military and civil jurisdiction. But in 1634 there were created eight shires which were to be governed as shires in England, with lieutenants, elected sheriffs, sergeants and bailiffs. They were James City, the country around Jamestown, Henrico, around the settlement of Sir Thomas Dale, Charles City, Elizabeth City, Warwick River, Warrosquayack, Charles River, and on the eastern shore, Accomac. That these counties, as a rule, took their names from and embraced the settlements is a curious phase in English institutions—for it was nothing more or less than the towns growing into the counties. This was very different from the origin of counties in England and in New England. In the former they represented the original divisions of petty kings or a collection of such small principalities under one strong hand; in the latter the county arose from a combination of townships for judicial purposes, it is supposed, since the origin of counties in that section has not been definitely

ascertained. This peculiar feature of the Virginia county history is easily explained. Planting having originally been along the rivers, as transportation and intercourse required, was confined to a small area. As Indian panics became less frequent, people ventured forth beyond stockades, and gradually went away from the towns in their pursuits of agriculture imposed upon them by inclination and the nature of the country. New planters came in and settled at once in comparatively remote regions, and population thus became too scattered to be ruled by a few military leaders. The complications arising from the new conditions, the importation of servants, the introduction of negro slavery and the settling of new lands, required a court and its proper minister to secure harmony. The wishes of the original settlers had great influence in the selection of sites for court-houses, so that in some of the older counties many of the inhabitants were often considerably inconvenienced by having to travel forty or fifty miles to attend court, and saw a better alternative in submission to injustice and injury. In the counties created afterward the attempt was made to place the court-house as near the center as possible, but as long as population remained in cismontane regions there was a natural desire to seek the river banks for sites. The main point to be remembered is that at first the counties were the outspreading of towns, not that the towns, as later, were the results of the people in the county seeking a place for the transaction of business necessary even in a planting community.[1]

In 1680 there were twenty counties, a word introduced into the laws in 1639, and the number increased as it became necessary. For Englishmen were not content to remain

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[1] Spotswood Letters, Brock, p. 37. Since this sentence was published the writer has read the "Genesis of Counties," by William Green, LL. D., which appeared in the able memoir by one of Virginia's historians, Rev. Dr. Philip Slaughter, and he sees no reason why his theory should be changed.

always in piedmont regions, but crossing the mountains gave names to vast tracts of territory, out of which were afterward carved states. In the formation of new counties natural boundaries were adopted whenever it was possible to be done. When the county had finally become crystallized, it was divided into parishes, precincts for the constables, and walks for the surveyors of highways, the last two divisions being subject to such rules and alterations as the county court thought fit to make. Every county bore its share of the public levy, and was obliged to pay the charges of its convicted prisoners, to make and clear its roads, and to keep the rivers free from underbrush and other obstructions. The public roads were made by the inhabitants under the guidance of the surveyors of highways, and were extended to the county lines. The obligation to work on the roads finally devolved upon laboring tithables, who were summoned by the surveyors. Bridges were in the care of surveyors of highways, and when a bridge was built between two counties, the expense was shared by those counties. In the absence of bridges many ferries were established at convenient places along deep rivers.

Turning now from a consideration of the county in general to a study of the particular officers in the county, one is struck almost at first glance by the prominence of the lieutenant, anciently the commander, who besides being the chief of militia in his county, was a member of the Council, and as such, a judge of the highest tribunal in the colony. In early days he was charged with the duty of keeping sufficient powder and ammunition in each plantation, of seeing that people attend church regularly and refrained from work and traveling on Sunday; of levying men to battle with dusky foes who might be lurking about to steal hogs; of making annually a muster of men, women and children, and of reporting to the Governor the names of new comers. He was obliged also to see that there were no infringements of the tobacco laws, a most important duty in Virginia. With commissioners of the Governor he held monthly courts for the

settlement of suits not exceeding in value one hundred pounds of tobacco, and from this court appeal was to the Governor and Council. This court also heard petty causes and inflicted proper punishments. But as the head of the militia the lieutenant was most important. The military character imposed upon the colony in the beginning was for some years necessary, but the practice of arms seems to have been neglected for a time after Yeardley's return to Virginia. The record of the reorganization of the militia is found in the law made in 1624–25: "That at the beginning of July next the inhabitants of every corporation shall fall upon their adjoining salvages as we did the last yeare, those that shall be hurte upon service to be cured at the publique charge; in case any be lamed to be maintained by the country according to his person and quality."[1]

This order finds explanation in an account of the plantation written in 1624 by some of the surviving planters. It states that on March 22, 1621–22, the savages, who had been allowed many liberties in their intercourse with the whites, fell upon them without warning, and slew many. Falling upon the savages was retaliation and self-protection in their weakened condition. The laudable and Christian design of converting and educating the savages, as set forth in the writings of the first twenty years of the century, was changed to a plan of extermination, in which the planters were still actuated by Christian motives, if one relies upon their own statements: "Our gov^{r} Counsell and others have used their uttermost and Christian endeavors in prosequtinge revenge against the bloody salvadges, and have endeavored to restore the Collonye to her former prosperitye, wherein they have used great diligence and industrye, imployinge many forces abroade for the rooting them out of severall places that thereby we may come to live in better securitie, doubtinge not but in time we shall clean drive them from these partes, and

[1] Hening's Statutes, Vol. I., p. 123.

thereby have the free libertie and range for our cattle."[1] This was the same kind of spirit as that shown by most of the colonies in their relations with the red men. So long as it was convenient or politic, treaties were observed, but little was required to change the feeling of brotherly love to the conviction that the "dead Indian is the best Indian." The seemingly heartless but necessary decision, "the Indian must go," was made at that early date and by a community whose members in a century's time had learned to be proud of Indian ancestry. But fear of Indians kept the militia together, and in 1690 it consisted of 6,570 horse and foot; in 1703 of 10,556; in 1715 of 14,000; and in 1755 of 28,000. It was during the rule of Spotswood that the militia reached a high state of perfection, the effect of which was noticeable in the French and Indian war. The Governor was the commander-in-chief of the militia, and he appointed in each county a lieutenant, upon whom was conferred the honorary title of colonel, when he was a member of the Council. To this system of honorary titles has been traced by some the abundance of military titles in the South. The custom must have developed rapidly, for a writer in 1745 felt called upon to remark, "Wherever you travel in *Maryland* (as also in Virginia and Carolina) your ears are constantly astonished at the number of *Colonels*, *Majors* and *Captains* that you hear mentioned."[2]

The ancient planters—that is those who came into Virginia before or with Captain Gates—and their posterity were ex-

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[1] Col. Rec., p. 83. The following, from a letter concerning the massacre, was written to Virginia in 1622 by the Company. "As for the Actors thereof we cannot but with much griefe proceed to the condemnation of their bodies, the saving of whose souls we have so zealously affected, but since the innocent blood of so many Christians doth in justice crie out for revenge and yo^{r} future securitie in wisdom requires we must advise you to roote out from being any longer a people so cursed, &c." Neill: The London Company, p. 331.

[2] Itinerant Observations in America, London Magazine, 1745–46.

empted from military service, unless as officers; new settlers were not obliged to serve for one year after their arrival, and no person could be forced to exercise in arms outside of his parish or his county. In February, 1645, it was decreed that in certain counties every fifteen tithables should furnish and equip one man for service against Indians. This provision was afterward modified in a law that every forty persons should provide an able man and horse "with furniture, well and completely armed with a case of good pistolls, carbine or short gunn and a sword, together with two pounds of powder and tenn pounds of leaden bulletts or high swan shott, and alsoe that each respective forty tythables doe provide and send up to the severall storehouses five bushells of shelled Indian corn and two bushells of meale, eighty pounds of well salted porke, or one hundred pounds of good, well salted beefe for fower months' provision such man and his horse."[1] The bodies of troopers raised in this manner were called rangers, and from time to time patrolled districts likely to suffer from Indian invasion.

Governor Berkeley reported in 1671 that all freemen were bound to drill every month in their counties, but this rule was not always strictly followed. Governor Dinwiddie paid a great deal of attention to the proper training and regular exercise of his militia, and he divided the colony into four districts, each commanded by an adjutant to drill first the officers, then each company separately.[2] Certain persons were

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[1] Hening: Vol. I., 292; II., 435.

[2] On August 27th, 1763, Sir Jeffery Amherst wrote to Sir Wm. Johnson: "Colonel Stephen with a body of 4 or 500 men of the Virginia militia is advanced as far as Forts Cumberland and Bedford, with a view not only of covering the frontiers, but of acting offensively against the Savages. This publick spirited Colony has also sent a body of the like number of men, under the command of Colonel Lewis for the defence and protection of their South west frontiers. What a contrast this makes between the conduct of the Pennsylvanians and Virginians highly to the honor of the latter, but places the former in a most despicable light imaginable." Documents relating to the Col. Hist. of N. Y., Vol. VII., p. 546.

excused from militia duty; but if an overseer of slaves who had been excused should appear at muster without arms or not participating, he was liable to a fine. The celebrated William Byrd, while travelling with a surveying party to North Carolina in 1734, witnessed and recorded a parade as follows: "It happened that some Isle of Wight militia were exercising in the Adjoining pasture, and there were Females enough attending that Martial Appearance to form a more invincible corps."[1] General musters were held annually and company drills monthly, or once in three months. At intervals of ten or twelve years acts were passed to increase the efficiency of the militia on account either of Indian troubles or pressure from abroad. But there were frequent complaints of the neglect of muster duties, the difficulties in the way of summoning the militia and the partial futility of the laws. The whole system may be summed up as follows: Officers similar to those in England, a colonel, lieutenant-colonel, major, captain, were commissioned by the Governor or commander in the county, the cornets for cavalry, ensigns for infantry, sergeants, corporals and other minor officers being appointed by the colonel or the captain. Indians and negroes were allowed to act as drummers, trumpeters, pioneers on a march, "hewers of wood and drawers of water." The number of men in a company ranged from fifty to seventy-five, and there were from seven to ten companies in a county. An examination of militia accounts gives a fair idea of the state of the colonial militia. Payments were claimed for horses, cattle and articles impressed for provisions and ammunition supplied. It was the custom to draft soldiers in the eastern counties and to conduct them under guard to Fredericksburg or Winchester. The guards were paid, as was also the sheriff "for maintaining drafted soldiers in Goal."[2]

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[1] Capt. Byrd's Narrative of the Dividing Line, Vol. I., p. 70.

[2] In 1758 a bill was presented by Abraham Maury for "28 days service in riding to forts and settling townships." In Virginia before the Revolu-

Connected with the militia was an interesting institution which began to take form in 1726. The number of slaves had by that time become very great and occasionally there arose from this source slight troubles causing anxiety to owners and rulers. As early as 1710 a negro slave was freed by the Assembly for having discovered to the authorities a conspiracy among negroes of Surrey county looking to insurrection. Even at that early date were brewing troubles that afterward did occur, as Gabriel's War in 1800 and Nat Turner's Rebellion in 1831.[1] To prevent insurrections, unauthorized meetings, wandering from one plantation to another without passes, measures had to be taken by the government. The chief of militia in each county was ordered to appoint an officer and four men, called patrollers, to visit at any time negro quarters or places suspected of harboring unlawful assemblies. These "paterollers," as the negroes learned to call them, could arrest offenders and send them to the nearest justice, who, if the offenders deserved it, could have them whipped.

At the outbreak of the revolution, the militia was re-organized and nomination of officers was placed in the hands of the

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tion there were no townships in the New England sense, but the use of the word by Maury is explained in a letter written in the same year by him to Colonel Theoderick Bland, Sr., as follows: "I took a tour to the forts . . . those who had land of their own freely embraced so fair an opportunity to defend their possessions and readily agree to associate and collect themselves together in small townships, but when I went to fix upon the most covenient places to erect the said townships every person insisted that his own place was most convenient . . . and I accordingly made choice of Mayo's Fort, Hickey's Black Water, and Snow Creek as the most proper places for the said township(s) . . . I have since my return heard that Blair township at Snow Creek is in great forwardness, but that the others are not yet begun, the people being yet too busy about tending corn . . . I demanded . . . 80 men to garrison the said townships." Bland Papers, Vol. I., p. 11.

[1] An account of Nat Turner's rebellion is in the "Atlantic Monthly," Vol. VIII., pp. 173–187, and of Gabriel's war in the same publication, Vol. X., pp. 337–345.

committees in counties, and their appointment came from the Committee of Safety. From the militia and volunteer troops were raised minute men, and the militia was drafted into the Continental Army. The subject of the militia has been treated first, because it naturally preceded local courts, as protection against outside foes was at first more necessary than protection against each other, and as long as men were fearful of attacks from without, internal disputes had to be laid aside for the general welfare.

But monthly courts were established, but as they were changed in 1643 to county courts, and the commissioners changed to commissioners of county courts, it is best to study them under the latter title. The number of commissioners, who were afterward called justices and in 1770 magistrates, was for some years undetermined; in 1661, in view of the contempt in which the place was held, and on account of disorders arising from the large number, the court was reduced to eight men in each county, who should in succession exercise the sheriffalty. This law was not successfully carried out and fell into disuse, for there were often as many as fifteen justices in a single county. As a rule the courts nominated their successors, who were appointed by the Governor. Not always, however, did he follow their suggestion, though neglect to do so was met by such vigorous protests as: "But y^{t} now we despair of M^{r} Stapleton being a member of our Court, a person most notorious by abusive, profane and Imoral Qualities so misbecoming the seat of Justice y^{t} we humbly desire to be excused sitting wth him, beleiving him designedly represented to make both us and ye County in generall uneasie.

"The rest of y^{e} Gent^{e} we should have comply'd with, and would not have presum'd to have given yr Excy. this trouble at this time had we not Just reason." "W^{m} Johnston, Gent. being asked whether he would accept & Swear to the Commission of the Peace; now Produced, Answered, That he would not accept and Swear to sd: Commission because Anthony Struther, William Hunter and William Lyne are put in the

Commission without a Recommendation from the Court." Six other members of the same court refused to serve for similar reasons, one of them expressing the belief that Lyne had begged for the commission.[1] These extracts show the sentiments of justices about their associates, and insomuch as there was no compensation for serving, right seems to have been on the side of those justices, who set up a high standard of admission to their membership. The courts were commissioned at their own request or at the Governor's pleasure. An account of Virginia, written about 1698, by one evidently hostile to the Governor, states that "he renews that commission commonly every year, for that brings new fees, and likewise gives him an opportunity to admit into it new favorites, and exclude others that have not been so zealous in his service."[2] Four of this court constituted the quorum and met at the court-house monthly, or if necessary more frequently.[3] Court-day was a holiday for all the country side—especially in the fall and spring. From all directions came in the people on horseback, in wagons and afoot. On the court-house green assembled in indiscriminate confusion people of all classes—the hunter from the backwoods, the owner of a few acres, the grand proprietor, and the grinning, heedless

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[1] Palmer: Calendar Virginia State Papers, Vol. I., pp. 88, 237.

[2] Mass. Hist. Coll., Series I., Vol V., p. 150.

[3] One of these four had to be of the "quorum." This word does not seem to have had any special signification in Virginia towards the end of the eighteenth century, but when monthly courts were created it was ordained that the commander should be of the "quorum," and in the appointments for the earlier courts, certain persons were designated as of the quorum. Blackstone wrote, in regard to justices of the peace, "In which number some particular justices or one of them are directed to be always included, and no business is to be done without their presence, the words of the commission running thus, "*quorum aliquem vestrum* A. B. C. D., &c., unum esse volumus," whence the persons so named are usually called justices of the *quorum*. And formerly it was customary to appoint only a select number of justices eminent for their skill and discretion to be of the *quorum*, but now the practice is to advance almost all of them to that dignity, etc." Cooley's Blackstone, Vol. I., pp. 349–351.

negro. Old debts were settled and new ones made; there were auctions, transfers of property, and if election times were near, stump speaking. Virginia had no town meeting as New England, but had its familiar court-day.

When they had been commissioned, the justices took the oaths of allegiance, of office, &c. In 1634 it was directed that one member of the Council should assist at the monthly courts; this rule was changed in 1662, when the Governor undertook for himself and the Council to visit all the county courts, that he might be able to give the King an exact account of the government. It was enacted, therefore, that he and one of the Council, or two of the Council commissioned by him for every river, should "sitt judge in all the county courts, and there hear and determine all causes then depending in them by action or reference from any other preceding court in that county. Provided noe councellors be appointed to goe the circuite in the river wherein he doth inhabit." But in a few months the institution was abolished on account of expense. Though short-lived, it is interesting as a phase of the system of itinerant justices whose existence has been traced back to Alfred's time, through the eyres, the provincial circuits of the officers of the Exchequer, and the visitations of Edgar and Canute. The system arose and was continued for centuries in England for purposes of taxation, but the judicial features were added from time to time and tended to absorb the financial.

County courts could hear no cases for debts involving less than 20 shillings, and to prevent the expense of traveling to Jamestown they had final jurisdiction of causes under £16 sterling. But needs of the colony increased the powers and duties of the county courts, and at the Revolution they settled all cases at common law or chancery, except when loss of life or limb or legal protection was involved. They were also courts of administration and had the care of orphans. Appeal was from them to the general court. The general court was originally the quarter court held by

the Governor and Council in March, June, September and November. The June term was abolished in 1659, and on account of the absurdity of calling a court meeting three times only in the year a quarter court, the name general court was adopted in 1662. But November was too late in the year to allow planters to attend court with any degree of comfort, and September was too early, inasmuch as trading vessels did not arrive until later, and the tobacco trade was dull; hence, after 1684 the terms were held in April and October.

To return to the county court, probably one of its most important functions was the laying of the county levy, for Virginians paid three kinds of taxes—parish, county and public. For the laying of county taxes the court met and ascertained the county expenses for roads, bridges, buildings, burgesses' salaries, etc. To determine each man's proportion, the whole sum was divided by the number of tithables, for after a brief experiment during the years 1645–48 of taxes directly upon property, the authorities reverted to the poll system.[1] The court established rates of ordinances or inns, recommended attorneys to the Governor, and paid fees for the destruction of wild beasts. Jones wrote in 1724: "The wolves of late are much destroyed by Virtue of a Law which allows good Rewards for their Heads, with the Ears on, to prevent Imposition and cheating the Public, for the Ears are crop'd when a Head is produced."[2] The court had the yearly appointment of surveyors of highways, for whom it divided the county into precincts, that all county and church roads "might be kept clear, respect being had to the course used in England.[3] But water-ways were used in preference to land

[1] The following is a list of tax rates in 1645, taken from Hening's Statutes: 1 cow 3 years old, 4 lbs. tobacco, horses, mares, and geldings, at 32 lbs. a piece, a breeding sheep 4 lbs., a breeding goat 2 lbs., a tithable person 20 lbs.

[2] Hugh Jones: Present State of Va., p. 51.

[3] It is interesting to note the expenses of a survey. In the bill for the Fairfax survey of 1736, among the items of expenditures embracing feed

routes, and the road system of Virginia was for a long time imperfect. The surveyor-general of the colony was appointed by the president of William and Mary College. The land surveyors were in general examined and recommended by the same person or by the surveyor-general, and having been approved of by the Governor and Council took the oath of office before the court of the county where they were to serve. Although at one time there was a statute allowing county courts, with the consent of a majority of the inhabitants, to divide counties into parishes, it was the custom for parishes to be created by act of Assembly. The court made its own by-laws, and with representatives from the parishes could make by-laws for the county; it nominated inspectors of tobacco, granted divorces, regulated the relations of whites to the Indians, tried cases of piracy, erected ducking stools, pillories, whipping-posts and stocks, appointed collectors of county levies, and regulated the relations of master to servant. For instance, in August, 1751, the sheriff of Augusta County "having informed the court that Henry Witherington, a servant boy belonging to John Stevenson, was in jail and that he had an iron lock in his mouth, it was ordered by the court that he immediately take off the same.[1]

When an Assembly had been called, and the county had elected its two burgesses, the court sat as a court of claims, to take proof of debts and complaints which were to be presented to the Assembly by the burgesses, "and to know the pressures, humours, common talk, and designs of the people of that country, perhaps there is no better way than to peruse the journals of the house of burgesses, and of the committee of grievances and propositions."[2] When circumstances arose

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and shelter for horses, lodging, meals, etc., amounting in all to £37, are found claret, madeira wine, beer punch for gentlemen, tea for gentlemen, and liquors for surveyors, costing over £11.

[1] Virginia Historical Register, Vol. III., p. 76.

[2] Mass. Historical Coll., Series I., Vol. V., p. 149.

for which laws were not expressly provided, the court was empowered to attend to them. Thus in Lancaster county, in the lack of a vestry, the court with the minister of a parish appointed church-wardens and sidesmen or assistants. The jurisdiction of this court over slaves was varying. The court of Isle of Wight County had a slave, in 1709, receive forty lashes upon his bare back for being accessory to a negro insurrection; and a free negro, who had entertained some of the runaway negroes at his house, received twenty-nine lashes "well laid on." Information of offenses was laid before the court by the grand jury, consisting of impaneled freeholders possessed of at least fifty pounds in real or personal estate, or by church-wardens. An idea of the state of justice in the eighteenth century may be derived from the records of grand jury presentments: "We present Thomas Sims, for travelling on the road on the Sabbath day with a loaded beast;" "William Montague and Garrett Minor for bringing oysters ashore on the Sabbath," etc. Persons were also presented for cursing, swearing, bastardy, and one for "drinking a health to King James and refusing to drink a health to King George.[1] If the accused desired, he was tried by a petit jury consisting of from six to twelve persons, for the practice of the general court was followed by the lesser. In 1672 the sheriff of Henrico county was ordered to impanel six men to try a woman for stabbing to death her fellow servant; six men were summoned to try a traitor and a cattle thief. In certain cases the old English custom of the appointment of a jury of matrons prevailed. Very early in the colony's life, the jury consisted of ten and of fourteen men, notwithstanding the clause in the charter providing for a jury of twelve. But that there was an attempt at least to copy after English practice, may be inferred from the following enactment: "And the jurors to be kept from food and releise till they have

[1] Meade: Old Churches and Families of Virginia, Vol. I., pp. 230, 254, 365; Va. Hist. Reg., Vol. III., p. 77.

agreed upon their verdict according to the custom practised in England." The county courts had great regard for their dignity, as has been shown where the court refused to sit with an unworthy member; and to prevent misconduct in justice it was enacted "that whatsoever justice of the peace shall become soe notoriously scandalous upon court dayes at the court-house, to be soe farre overtaken in drinke that by reason thereof he shalbe adjudged by the justices holding court to be incapable of that high office and place of trust, proper to inherett in a justice of the peace, shall for his first such offence be fined five hundred pounds of tobacco and cask and for his second such offence one thousand pounds of tobacco." If he was again guilty, a heavier fine was to be imposed and he should lose his position. One court passed a by-law that an attorney who interrupted another at the bar should be fined five shillings. At one session of this court the justices were in a quandary about the treatment of an old lawyer, who had long practiced in the county, and who had been urged over the precipice of profanity by the sarcastic witticisms of a younger man. After considerable consultation they decided "that if Mister Holmes did not quit worrying Mister Jones and making him curse and swear so, he should be sent to jail."[1] This court had some time before committed a man to the stocks for two hours and fined him twenty shillings "for damning the court and swearing four oaths in their presence."

Very petty cases were heard by one or by two justices, from whom appeal was to the county court, in which case the justices who had had original jurisdiction were not allowed to participate in the trial. In the absence of a coronor a justice could act in his stead.

The executive officer of the court was the sheriff, who was not so much the representative of the Governor in the county court as he was the representative of the county to the Governor. He was appointed as follows: the justices nominated

[1] Va. Hist. Reg., Vol. III., p. 17.

three persons, generally from their own body, one of whom was, as a rule, commissioned by the Governor, though the practice varied. The sheriff or his deputy had to serve writs, superintended elections of burgesses, collected public and county levies and sometimes parish tithes, impressed men for service on shipboard, sold estates of suicides at public outcry, made arrests, sometimes resorting to the old "hue and cry" in pursuit of runaway servants or slaves, collected fines and carried the public levy to the capital. Sheriffs, as well as other officers of the law, adopted the practice of attending parish churches for the purpose of serving writs, warrants, etc. This was no doubt easy and agreeable for the sheriffs, but the worshipping delinquent could not have relished such an interruption to his devotions. Persons liable to such visitations neglected their church duties, so that a law had to be passed forbidding sheriffs to make arrests on Sundays or muster-days. This law did not prohibit, however, the pursuit on Sunday of an escaped felon. By special warrant from the Governor, a councillor, or two justices, a sheriff could make arrests on shipboard. When peace was concluded between Queen Anne and the King of France, in 1713, Governor Spotswood ordered a proclamation to be "openly read and published at the principal Church of each parish immediately before divine service by the Sheriffs of the respective Countys, their officers, or substitutes on horseback." The sheriffs had also to see that copies of the special collect for the occasion should be distributed in time. The sheriffs or their deputies executed the orders of the courts, and in some cases they were sore let and hindered in running the race set before them. Peyton gives examples of writs returned with indorsements such as—"Not executed by reason there is no road to the place where he lives;" "not executed by reason of excess of weather;" "by reason of an axe;" and "of a gun;" "because the defendant's horse was faster than mine;" "because the defendant got into deep water—out of my reach."[1] Such

[1] Peyton: Hist. of Augusta Co., p. 58.

were the duties and cares of the sheriff, who in the exercise of his various functions, from executing an order of the Governor to ducking a witch, was but the old shire-reeve of England, with powers changed to suit a new order of things.[1] The other officers of the county were the coroner, who was commissioned by the Governor to view corpses, and, if necessary to act as sheriff, and the constables, who were the assistants of the sheriffs in giving notice of court meetings and of levies, in looking after runaway slaves, in transferring paupers from parish to parish and in pursuing criminals.

The county system of ante-Revolutionary Virginia has been studied thus minutely in view of the fact that it served as a model for, if it did not directly influence, similar institutions in the South, South-west, and even in some States of the West.

In this system the dominant idea was gradation of power from the Governor *downward*, not upward from the people. The necessary tendency to strong centralization was counteracted, however, by the individuality of officers, high and low. But the system offered many loop-holes for corruption, and possessed real evils. The justices, serving at the Governor's pleasure, might be wrongly influenced by him; the sheriff, his appointee, might use corrupt means to return, as elected to the Assembly, burgesses who could be used as tools by the Governor. Few, comparatively, were allowed, by reason of property qualification, to effectively raise their voice against corruption. In view of these chances it is somewhat remarkable to find how few instances of malfeasance in office are recorded. Many changes have been introduced in the county system since the Revolution; but, as long as Virginia remains a largely agricultural State, so long will her local political life be moulded upon the plan, which has prevailed for two centuries.

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[1] For an account of the ducking of Grace Sherwood, the so-called Virginia witch, see MAGAZINE OF AMERICAN HISTORY, November, 1883, p. 425.

VI.

THE TOWN.

The circumstances, which caused the county system to prevail in Virginia and aided its growth, prevented any extensive development of town life and, consequently, the institution of town government. The first settlers were obliged to content themselves with the slight fortifications, made of boughs and trees arranged in the form of a half moon, about Jamestown, which was a town only in its being a collection of rude dwellings fashioned after Indian patterns but a sufficient protection against wind and weather. With time appearances changed, for Jamestown was in 1614 enclosed by a palisade, and consisted of two rows of frame dwellings, two stories and an attic high, three storehouses and a church. A few houses also were outside of the town proper, as were two block houses, which were used for posts of observation of the movements of Indians in the vicinity. At that time there were several other embryonic towns along the Powhatan, the most important of which were Henrico and New Bermudas. Henrico had been built in 1611, under the direction of Sir Thomas Dale, and its extent was several acres. It was on a peninsula formed by a bend in the river, and was further protected by a palisade, at each corner of which was a watch tower. There were three streets in the town, with a church, storehouses, etc. Two miles inland was another palisade extending across the land, along which were built watch towers, and on the opposite side of the river a region nearly twelve miles in extent was impaled, so that

corn and pasture lands, habitations and parsonage, and a "guest house" for invalids were all inclosed and protected by an arrangement of fortifications. New Bermudas, or Bermuda town, was built about 1612, and Ralph Hamor considered "this Towne or plantation a businesse of greatest hope ever, begunne in our Territories there."[1] Hamor mentioned a patent for the government and organization of this town, but as the document has not been preserved, the interesting subject of the relations of the different hundreds to the town must remain unstudied.

But the government both of Jamestown and of the other settlements, which had but a feeble existence, was the government of the colony. In the martial code, to be sure, were set forth in great detail the rules for the guidance of the captain of the watch and of the guards in the towns, and if one relied upon this code alone as authoritative, beautiful analogies might be drawn of the government of towns in Virginia, and that of towns in England and elsewhere. But the details cannot be said to have been carried out, and in the absence of corroborative statements one must be satisfied with a brief outline of the proposed administration. Strict watch and ward were to be observed, due attendance upon church services was enjoined, and there were laid down such sanitary legislation as involved the prohibition of washing clothes in the streets or near wells and pumps, the obligation of every one to keep his house clean, as well as the space before the door, and the necessity of placing the beds at a certain height from the floor. An idea of the power of the authorities to interfere with individuals may be seen in the order to the officer of the watch: "Further he shall command all disordred people vntimely (sitting up late in vnusuall assemblies, whether in priuate meeting, publicke tap houses or such like places) vnto their rests, for which he shall cause all fire and candles to be put out and raked up in the towne, and such

[1] Hamor's Narrative, &c., pp. 18–34.

night walkers or vnruly persons whome he shall meete in the streets he shall either send to their lodgings or to the Prouost Marshall according as their misdemeanour shall require."[1] Those primitive towns, therefore, built to meet the wants of the times and with materials most convenient, were governed by military authorities.

With broad stretches of pasture and woodland offering an easy conquest, the settlers were ill-content to remain cooped up behind wooden fences, but longed for private possessions and unrestricted power to labor. Towns had begun to decay and town life was stagnant as early as 1619, and from that time until 1680 probably the lowest and broadest foundations were laid for the prevalence of country life and customs. From 1650 until 1730 may be called the period of legislation for towns, from 1730 to the Revolution and the after years, the period of the slow growth of towns. About thirty years of Virginia's history demonstrated that in spite of river-ways there was delay both in obtaining goods from England and in shipping the native products. To relieve the people from these inconveniencies and the possible evils of forestalling, the Assembly in 1655 passed an Act, which provided for setting apart in every county of not more than two places one mile and a half in extent, where alone trade could be carried on until eight months had passed. The commissioners of the county were bidden to appoint market day, to keep courts, county offices and prison, and to endeavor to have churches and inns established within the area assigned for the market. This Act was due in a great measure to the efforts of Edward Diggs, who was Governor in 1655-56. But the proviso that trade should be carried on in the market alone was calculated to render the Act void, and it was repealed in 1656, though it was provided that "if any countrey or particular persons shall settle any such place whither the merchants shall willingly comé for the sale or bringing of goods, such

[1] Force's Tracts, Vol. III., "Lawes, &c." p. 39.

men shall be lookt upon as benefactors to the publique."[1] This may be considered the first attempt in Virginia to bring about by legislation an institution, which was opposed by nature and the habits of many inhabitants.

But some people wanted towns, and did all they could to favor their establishment. In 1662 appeared a pamphlet entitled "Virginia's Cure," in which the author bemoaned the loose habits of the planters, who by their mode of settling at some distance from each other, were debarred from attending weekly religious services, the want of a proper education for the rising generation, and many other ills which threatened to come upon the people. He advocated, as the remedy for such political and social diseases, the building and inhabiting of towns. The Virginians being indisposed to adopt such a plan, this advisory narrative, which was addressed to the Bishop of London, goes on to suggest that laborers be sent from England to build the towns, and that the planters should occupy houses in the towns, and visit on horseback their plantations whenever it might please them to do so. This proposition was never carried into effect, as might have been expected, and for several years no more efforts were made to erect towns. In 1679 another reason was given why towns should be built—namely, that the existing manner of living rendered the people particularly liable to the devastations of Indians. Conditional grants were, therefore, made to Major Laurence Smith and Captain William Bird, who were expected to defend the borders from the Indians, and whose settlements would be towns with local governments. The law with slight changes was afterwards made more general.

William Fitzhugh, who was a planter and lawyer of Stafford county, wrote very confidently in July, 1680, "we are also going to make towns. If you can meet with any tradesman that will come in and live at the Towns, they may have large privileges and communitys."[2] He referred to the act

[1] Hening: Statutes, &c., Vol. I., p. 397.
[2] Va. Hist. Reg., Vol. I., p. 166.

which was passed in the month of June of that year, in order to counteract those circumstances, which the Assembly thought were diminishing the value of tobacco. The principal provisions of this act were as follows: that each county should buy fifty acres of land for ten thousand pounds of tobacco and cask, which price the owner of the land was compelled to accept, that the land so obtained should be vested in trustees appointed by the county court, that all goods, &c., for exportation, should be brought to the towns, and all chattels, servants, &c., which should be imported were to be landed at the towns. All tradesmen and mechanics, who should take up their permanent abode in the towns, were to be free from arrest or from seizure of their estates for debts incurred before they came to the towns. This Act was suspended by the King in Council at Whitehall in 1681, as the lords commissioners of customs represented to him that it was impracticable, and would injure the receipts from customs. The Council of Virginia reported to Governor Culpeper in 1683, that this Act had obstructed the merchants, who taking their goods to the places designated by the Act and finding no place to store them, had refused to obey its injunctions. An Act of 1691 was similar to that of 1680, but, as it was suspended in 1693, it is of interest only in recording the fact that at some of the places named in the Act of 1680, little mushroom settlements had sprung up. The lands, however, which had been vested in trustees, were in 1699 confirmed to those trustees, and leave was granted for them to be used as ports.

Nearly half a century had been passed in unsuccessful attempts to introduce town-life into the colony, and the laws were of little more value than the paper upon which they were recorded. The causes of this failure were various, and in many cases were involved in the tobacco question. Class interest or a self-seeking policy prevented the fulfillment of the law for towns, as they had done in the case of markets. The majority of the burgesses being planters, each man naturally wished to have the conveniences of a town near

him, and consequently one and even two paper towns were erected in every county. Another disadvantage in the laws that were passed, was the obligation of persons to sell and buy in a certain place only, and this of course aroused the enmity of merchants, who had obtained good custom in places they had occupied for some time, and who would have lost it, if they had been obliged to move to another part of the country. In the absence of towns, trade was warped for those merchants, who had to sell on credit, and who were compelled in following their vocations to journey over many miles, collecting debts or doing some little retail business. But though the people might at times have desired towns, the continued frustration of the laws rendered them more and more opposed to the change from country life; and as a Virginian argued and was quoted by a writer in 1689, "they might observe already, wherever they were thick seated, they could hardly raise any stocks, or live by one another; much more would it be impossible for us to live when a matter of an hundred families are cooped up within the compass of a half a mile of ground."[1] But the welfare of Virginians was barely nothing in comparison with the vast interests accruing to Englishmen from the culture of tobacco—and tobacco was king.

One great impediment to the development of town life was the weakness of the mercantile class.[2] Owing to the manner of planting the colony and the laws governing trade, there was no strong body of men, who, ensconced behind high walls of their town or towns, could compel by force of arms

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[1] Mass. Hist. Coll., 1st Series, Vol. V., p. 131.

[2] De Vries, in narrating the account of his voyages to America, spoke as follows of the merchants of Virginia in 1639. "The English there are very hospitable but they are not proper persons to trade with. You must look out when you trade with them, Peter is always by Paul, ... For if they can deceive any one they account it among themselves a Roman action. They say, in their language, 'He played him an English trick,' and then they have themselves esteemed." New York Hist. Coll., 2nd Series, Vol. III., p. 127.

or through the ever potent influence of money the central government to grant them privileges and immunities, which would have given them a semblance of local power. There was no "tumor plebis, timor regis, tepor sacerdotii," as town organization was characterized by a writer in the reign of Richard I, to wrest from the Assembly the right of laying local taxes, and the consequent right of electing local magistrates and police. In Jamestown alone of the settlements, the inhabitants were allowed to make by-laws, but this privilege was granted them in 1676, during Bacon's regime, and probably was never exercised, as Jamestown was soon afterwards almost entirely destroyed by fire. With the eighteenth century, however, began a new method of town organization. Early in the year 1705 the English merchants who were interested in Virginia trade inaugurated a movement looking to the establishment of ports at suitable places on the larger rivers of Virginia. The matter having been brought to the notice of Queen Anne, she referred it to the commissioners of trade and plantations. They recommended to her that such places should be established in order that the royal revenues might be regularly collected, but they also suggested that the wishes of planters and merchants should be taken into consideration, and, therefore, that the number of ports should not be greater than three on each of the large rivers and two in Accomac.

The Queen, therefore, issued instructions to the Virginia authorities to bring about the passage of such an Act, as would meet the necessities of the merchants, and satisfy the planters, which Governor Nott accordingly recommended to the Assembly of October, 1705. The Act for Ports was passed, but the Assembly went several steps further than the establishment of mere wharves or docks.[1] Using the argument that houses would be erected at these ports, the burgesses enacted that at every port a town should be established,

[1] Hening: Statutes, &c., Vol. III., pp. 404–418.

where alone within an area of five miles, trade should be carried on, and where alone ordinaries could be established, except at a ferry or court-house ten miles distant. Those who should take up their abode in these towns were to pay but one-fourth of the regular amount of duty upon trade, and were to be free from all tobacco levies for fifteen years after the Act went into execution, except the levies on slaves and the church rates, where a church was or should be built in the town. Another inducement offered was that inhabitants of these towns should not be obliged to do militia duty outside the town limits, except in case of war, and then they could not be made to go further than fifty miles. Provision was thus made for buildings and inhabitants, and some acute mind, that had no doubt discovered the flaw in preceding Acts, suggested that "such a number of people as may be hoped will in process of time become inhabitants of these ports and towns cannot expect to be supported without such regulations are made and methods put in practice as are used in the towns of other countrys." A most extraordinary and radical departure from former policy was therefore taken. Each town was to be a free borough with markets and an annual fair. For their government, whenever the number of inhabitants should have become thirty families, they were, upon summons from the Governor, to elect eight benchers of the guild hall, who should annually elect one of their number director. Vacancies in the number of benchers were to be filled by an election by the voters. The director, with three or more of the benchers were to constitute a court for hearing cases not exceeding in value £30, arising from trade in the town or on the road to it, and also criminal cases, though appeal could be made to the general court at the capital; cases involving more than £30 were to be tried by the county court. Small offences, such as immorality, sabbath-breaking, drunkenness, etc., were to be tried by a weekly court called the hustings, and consisting of the director and benchers. When there were sixty families in the town the voters were

to elect for a term, continuing during good behavior, fifteen brethren assistants to the guild hall, who should constitute the common council, which was to guide the director and the benchers in making a levy upon the inhabitants, and which with the director and benchers was to make the laws for the town. Whenever a town should become thus thoroughly organized, the inhabitants could elect a burgess to the Assembly. It must have been fully expected that this Act would be put into execution, for not only were the places for towns designated and the names given, but even the days for holding markets in each town were mentioned. The law was not to go into effect for three years, and probably never did, as will be seen hereafter, but it is interesting, both because many of its features were brought out in later laws, and because it appears to have been an endeavor to reproduce in Virginia some of the features of one of the oldest local institutions of England, which at that time, according to one writer,[1] "was merely the shadowy phantom of an institution long dead—a hazy, indefinite term—the significance of which was unknown to the few municipal magistrates in whose mouths it was still current." The merchant guild or "gilda mercatoria," for such it was, originated before the Norman Conquest, and seems to have been an organization for the control and direction of commerce. In some cases it obtained the right of governing the town, in others it was merged into the corporation and gradually was lost to view as a distinct body. It would be interesting to those engaged in a study of English municipalities to investigate the origin of this outcropping of the institution in America.

But the English enemies of Virginia towns made a vigorous protest against the Act, and urged in 1709 the following shortsighted but, as they no doubt fully persuaded themselves,

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[1] Dr. Charles Gross in Johns Hopkins University Circular, March, 1884, p. 60. See also Dr. Gross' thesis on *Gilda Mercatoria*, Ein Beitrag zur Geschichte der englischen Städteverfassung, Goettingen, 1883.

patriotic objections, viz., that "the whole Act is designed to Encourage by great Priviledges the settling in Townships, and such settlements will encourage their going on with the woolen and other manufactures there, And should this Act be Confirmed, the Establishing of Towns and Incorporating of Planters as intended thereby, will put them upon further Improvements of the said manufactures, And take them off from the Planting of Tobacco, which would be of Very Ill consequence, not only in respect to the Exports of our Woolen and other Goods, and Consequently to the Dependence that Colony ought to have on this Kingdom, but likewise in respect to the Importation of Tobacco hither for the home and Foreign Consumption, Besides a further Prejudice to our shipping and navigation."[1] Such arguments prove that influential persons in England still looked upon Virginia as existing for the purpose of filling the royal coffers and the pockets of home manufacturers, and this idea, which was strongly prevalent a century before, was backed by the argument of the necessity of having the colony dependent. This was the expression of the same feelings which prompted in later years the writs of assistance and the Stamp Act, but it did not meet with similar hostility. For within a few weeks after his arrival in the colony Governor Spotswood, under instructions from Queen Anne, issued his proclamation which repealed the Act, and another struggle for corporate life was over.

But the repeal of the Act did not at first discourage manufactures. So many slaves had been employed, and so much time and territory had been given to the culture of the staple, in order to meet the many demands for it, that its price was very greatly reduced. People being unable to exchange their tobacco for clothes were obliged to make their own garments and to raise the necessary cotton and flax, and in one county, during the year 1710, at least forty thousand

[1] Palmer: Calendar (Va.) State Papers, Vol. I., p. 138.

yards of woolen, cotton and linen cloth were manufactured. But before the Revolution the manufactures with the exception probably of the working of iron did not advance beyond the primary stages, that is, domestic handicraft, and thus one of the main incentives to the gathering together into towns was lacking. Thomas Jefferson who was so energetic in his efforts to set up local forms of government, strongly advised Virginians to remain an agricultural people and to let outsiders do the manufacturing for them. "Let our workshops remain in Europe," he wrote, for "the mobs of great cities add just so much to the support of pure government, as sores do to the strength of the human body."[1] With the exception of the Act of 1705, the policy in regard to town building was to build single towns at the proper time and in suitable places. As Jamestown had been destroyed in 1676, and the site had been found to be unhealthy, the seat of government of the colony was removed to a place called Middle Plantation, between the James and York rivers, where, in accordance with an Act passed in 1699 and repeated in 1705, Williamsburg was built. A description of the town and the manner of its being laid out will serve in the main as a description of the plans of most Virginia towns.

It was originally intended to lay out the town so as to form a monogram of W and M, in honor of the King and Queen, but this was found to be impracticable. There was a broad street running east and west and three-quarters of a mile long, at the west end of which was the College of William and Mary, and at the east end the capitol. This was Duke of Gloucester street, and parallel to it on either side were Nicholson and Francis streets, which were crossed by Botetourt, Palace, King, Queen, Nassau and other streets. The church was at the corner of Palace and Gloucester streets, and near it were the court-house and powder magazine. Spaces were left for a market place, court-house green and parking for the

[1] Notes on Virginia, p. 225.

palace, and the remainder of the town was divided into square plots, each of which was large enough for a house and garden, and the houses which were of brick or frame, were built at such a distance that a fire could not easily spread. On Queen's creek, a tributary of the York river, and on Archer's Hope creek, a tributary of the James, both of which creeks were not more than a mile from the town, were also dwellings and warehouses. Such was and is even at the present time the general plan of Virginia towns, though there were divergences arising from various causes.

There were but three forms of towns before the Revolution, the mere collection of houses, or village, the town for which trustees were appointed by the Assembly to attend to the surveying, letting and selling of the townland, both of which were under the jurisdiction of the county court, and the chartered town or borough. There were no cities in point either of population or of government. The towns with trustees were under the immediate charge of the Assembly. One curious feature of these towns was that in one after another wooden chimneys were built to the houses, and a special Act of Assembly was necessary to cause their removal. It was some years before burgesses were wise enough to insert in the Act, which established a town, the proviso against building wooden chimneys. Another cause of complaint in new towns was the large number of hogs and goats which were allowed to roam at will within the town limits. The Assembly would be notified of this nuisance, and an Act relating to the stock of that particular town would be passed. Thus, in 1734, inhabitants of the town of York were forbidden to allow their swine or goats to go at large, and it was made lawful for anyone to kill the animals found thus, and the flesh was to be for the use of the poor. This town of York came with complaints to the Assembly more than once. In 1736 an Act was passed to prevent the sale within that town of "rum, brandy, or other distilled spirits, or any strong liquors whatsoever, or any mixture of the said spirits or

liquor, in quantities of less than two gallons." This was done to correct the prevailing practice of adulterating liquors with water and selling the mixture, without a license, to slaves, servants, and the lower classes. But to some of the unincorporated towns were granted the privileges of holding fairs twice a year, and of having markets upon certain days in the weeks, and in which cases the old English laws against engrossing, forestalling, &c., were declared to be in effect.

With the exception of the capital, Williamsburg, which was created a borough and a market town in 1722, Norfolk was the only borough in the colony. The study of the incorporated towns will, therefore, be confined to the consideration of the municipal history of Norfolk, with some few comparisons drawn from the civic life at Williamsburg. The land upon which Norfolk was built was acquired and surveyed in accordance with the Act of 1680 for cohabitation, and its advantageous situation in a few years attracted a large number of people who engaged principally in commercial pursuits. Captain William Byrd, on his way to North Carolina, passed through the town, which he described as "not a Town of Ordinarys and Publick Houses, like most others in the Country, but the Inhabitants consist of Merchants, Ship Carpenters and other useful Artisans, with sailors enough to manage their navigation." At that time Norfolk offered a market for products of the lower portion of Virginia and the neighboring country of North Carolina. Its merchants carried on a steady trade with the West Indies, exchanging lumber, meats, flour, &c., for sugar, fruits, molasses and rum.[1] The number of the inhabitants had so increased by the year 1736, that in reply to their petition, the Governor, for the King, granted to them a charter which was afterwards confirmed by the Assembly, and by which the town was made an incorporated borough. The governing power of the borough was vested in a mayor, recorder, and eight aldermen, who

[1] Byrd: The Dividing Line, &c., Vol. I., p. 20.

were named in the charter, and sixteen common councilmen, who were elected by the officers who were first mentioned. The succession of these officers was provided for as follows: "And to perpetuate the succession of the said Mayor, Recorder, Aldermen and Common Council in all time to come, WE DO GRANT; That for the future they shall assemble in some convenient place in the said Borough, upon the feast day of St. John the Baptist, in every year, and shall elect and choose by the major vote of such of them as shall be present one other of the Aldermen of the said Borough, for the time being Mayor of the said Borough for the ensuing year. And upon death, removal or resignation of the said Mayor, Recorder, or Aldermen, or any of them, or within one month of such respective death or deaths, removal or removals, resignation or resignations, the rest of the said Aldermen, together with the said Mayor and Recorder, if they should be living, and Common Councilmen or the major part of them shall at a time by them to be appointed meet within the said Borough and elect and nominate some other person or persons to be Mayor, Recorder and Aldermen of the said Borough in the place and places of such persons so deceased as the case may require, so as the said mayor so to be elected and nominated be at the time of such election and nomination actually one of the Aldermen of the said Borough."[1]

There was no qualification as to residence, and the first recorder, Sir John Randolph, attended but one meeting, but appointed a deputy. The second recorder, Henry Tazewell, was an inhabitant of James City county. Not until 1752 was twelve months' residence required to make a man eligible to the common council. The mayor, recorder and aldermen constituted a monthly court called the "Hustings Court," for the trial of cases not exceeding twenty pounds, current money, but in 1765 this court was granted powers

[1] For a copy of the MS. charter of Norfolk (see Appendix) I am greatly indebted to J. Barron Hope, Esq., Editor of "The Landmark," Norfolk, Va.

equal to those of any county court, and its members were placed in the same grade as justices of the county court. The appointment of the town sergeant, who corresponded to the sheriff, and of the town constable was by the hustings court. In laying out the town a place had been left vacant for a school house, and when this was built a dispute arose between the town and county authorities about the right to appoint the teacher. In 1752 the right to appoint was given to the county court and the mayor, recorder and aldermen, but was afterwards conferred upon the corporation alone. The commonalty or common hall, consisting of the mayor, recorder, aldermen and common councilmen made by-laws, laid taxes for erecting lamps, paying watchmen, building magazines and making other public improvements, but the body's power was very limited, for almost everything done by it had first to receive the sanction of the central authorities, *i. e.*, an enabling Act of Assembly. It might appear to-day somewhat ridiculous for a State Legislature alone to give a town, with its properly constituted authorities, the right to decide upon what days markets should be held, or to lay a tax for building a prison, or providing a fire department, but the same principle is still active, and is seen in the case of large cities in this country, which have their police department controlled by the State, their justices appointed by the Governor, and are insufficient to perform, without the consent of the State legislative body, functions which concern them alone.

Before leaving the subject of the governing body it may be of interest to call attention to its possession of some points of resemblance to the merchant guild proposed in 1705. If guild hall be substituted for common hall, benchers for aldermen, and brethren assistants for common councilmen, very little difference could be discovered, for the respective officers had very similar powers. But there was greater respect shown to the principle of local government in the Act of 1705 than in the charter of 1736; the benchers and brethren assistants were to be elected by the people of the borough, and vacancies

in either body were to be filled by a like election. The aldermen of Williamsburg and Norfolk were appointed by the charter and they elected the common councilmen, and as they filled the vacancies in their body, the people had nothing at all to do in the election of their rulers. In many respects the organization of the boroughs resembled, if it was not modelled after, that of the county, and the privileges of the people in each were about the same. The inhabitants of Williamsburg and Norfolk were excused from militia service outside of the borough limits, but at the same time provision was made for a corporation militia and its dependent patrol, with regulations similar to those of the county militia. Each of the boroughs also sent a "citizen" or burgess to the General Assembly, but in his election, those alone could cast a vote, who had a freehold estate in one half an acre, with a house within the town, and apprentices who had resided there five years. Where two persons owned a house and lot in partnership, only one could enjoy the right of suffrage. Some advantages of living in the borough were derived from the market held two or three times a week and from the fairs, with the accompanying opportunities for trade and general intercourse.

The different professional, mercantile, and laboring classes in the boroughs occupied themselves in their several vocations unless there was a performance of the "Beggar's Opera,"[1] some patriotic celebration, a fair with its greased pigs, sack races, and bull baitings, or a court meeting, which brought about a commingling of people of every quality. The presence of the college of William and Mary and of the Assembly kept Williamsburg alive, but Norfolk's commercial relations with the outside world gave it a more bustling appearance, and its situation justified Jefferson's prophecy of its future greatness. In resistance to English aggressions the

[1] Howe: Historical Collections of Va. Forrest: Historical and Descriptive Sketches of Norfolk.

boroughs were prompt and energetic. In 1766 the "Sons of Liberty" were organized in Norfolk in opposition to the Stamp Act, and resolutions were adopted recognizing the sovereignty of George the Third, but expressing the determination to resist the curtailment of the privileges of British subjects, and by corresponding with lovers of liberty to combine the struggles for their rights. Four years later the merchants of Williamsburg and members of the House of Burgesses adopted equally patriotic resolutions, but at the same time determined and bound themselves not to import or sell goods, upon which the English Government had imposed a tax, and then adjourned their meeting to the Raleigh Tavern, where they drank toasts to the King, the royal family, the Governor, British Liberty, Daniel Dulany, and Lord Chatham. Notwithstanding their restricted liberties the boroughs had begun to be "tumores plebis, timores regis," and although it required years for the privileges of the older boroughs to be increased, the Virginian legislators were after the Revolution brought to understand, though imperfectly, the propriety of granting greater liberties to the newly incorporated towns. For a century Virginians had been legislating for towns and town government; the result was but a shadow of what a town ought to be as regards population and administrative methods, but the foundation was laid for the town system of to-day, and there could be no more interesting study than that of the development of Virginia cities from the humble beginnings of the seventeenth century, especially as "accidental circumstances . . . . may control the indications of nature, and in no instances do they do it more than in the rise and fall of towns."[1]

Conclusion.

When the Revolution had succeeded and steps were being taken towards an organized settlement of the great North-

[1] Notes on Virginia, p. 147.

west, Virginia was interested in the matter, and Jefferson, probably the greatest Virginian next to Washington, had considerable to do with the framing of the Ordinance of 1787, which provided for and was the basis of the forms of local government in Illinois and other western States. But the influence of the Virginia county system was felt, although Jefferson was strongly inclined towards the township organization. In 1661, when Sir Wm. Berkeley was instructed to encourage the building of towns in Virginia, the system of New England was pointed out as the model, and one hundred and odd years later the same idea was in the mind of Jefferson.[1] In 1780 he tried to bring about the adoption of a modified form of the township, and the following extract from a letter written by him in 1810 will give his own opinion upon the subject which seems to have been uppermost in his thoughts: "I have, indeed, two great measures at heart without which no republic can maintain itself in strength. 1. That of general education, to enable every man to judge for himself what will secure or endanger his freedom. 2. To divide every county into hundreds, of such a size that all the children of each will be within reach of a central school in it. But this division looks to many other fundamental provisions. Every hundred besides a school should have a justice of the peace, a constable and a captain of militia. These officers or some others within the hundred should be a corporation to manage all its concerns, to take care of its roads, its poor, and its police by patrols, &c., (as the selectmen of the Eastern township.) Every hundred should elect one or two jurors to serve where requisite, and all other elections should be made in the hundreds separately, and the votes of all the hundreds be brought together. Our present Captaincies might be declared hundreds for the present, with a power to the courts to alter them occasionally. These little republics would be the main strength of the great one. We owe to them the

[1] Sainsbury: Calendar of State Papers. Colonial, 1660–1668, p. 110.

rigor given to our revolution in its commencement in the Eastern States, and by them the Eastern States were enabled to repeal the embargo in opposition to the Middle, Southern and Western States, and their large and lubberly divisions into counties which can never be assembled. General orders are given from a centre to the foreman of every hundred, as to the sergeants of an army, and the whole nation is thrown into energetic action in the same direction, in one instant and as one man, and becomes absolutely irresistible." His letter to Kercheval in 1816 was similar, and showed in brief a desire to apply to the government of his State, but on a smaller scale, his doctrine for the government of the United States, "My idea is that we should be made one nation in every case concerning foreign affairs, and separate ones in whatever is merely domestic."[1] He saw, from past experience, the possible effects of centralizing the entire control of a large people in the hands of a few, and in trying to prevent further evils his views were most sound and sensible in the abstract, but he seems to have lost sight of the fact that the State government of the New England States had grown up from the local communities, and that similar local institutions in Virginia would have to be formed downward from the State. Other factors also had to be considered. The people of Virginia had been accustomed for a long period to institutions, which were directly opposed to the Jeffersonian theories of local government, and many changes had to come about before they could be accepted. For innovations cannot be made before the public mind is prepared for them. Legislation is in vain, that does not meet with the approval of the masses, and although it may apparently succeed for a time, yet a point will at last be reached, when the people will be aroused from listlessness and will legislate to suit themselves. Hence it is useless to establish by law institutions for a com-

[1] Washington: Jefferson's Works, Vol. III., p. 249; Vol. IV., p. 317; Vol. V., p. 625; Vol. VII., p. 12.

munity which neither requires nor appreciates them, and where nature has said, "Thus far shalt thou go and no farther." New conditions must arise and a public sentiment in their favor must be created before new rules can be safely made, for it is demoralizing to make laws that have no effect.

For many years the habits of Virginians changed but little. Here and there, along the water, a town became a city by the increase of trade, but plantation life prevailed. There were the same generosity and hospitality, although the fortunes of some had been diminished, which had distinguished the colonial times, and the same dependence upon slaves for almost every kind of labor. The abolition of entail and primogeniture had made it possible for the plantations to be divided and for all the sons to have an equal interest in the property. Otherwise society was the same, although the habits of excessive drinking and dissipation, which Bishop Meade bemoaned as marking the degeneracy of some of the ancient families of his State, were beginning to re-act. The habit of large planting, as distinct from farming, began to tell upon the the resources of the land. Tobacco was the staple, and fields were exhausted by excessive crops, the care of a great mass of slaves became very onerous, and the dark clouds of the coming strife were looming up in the political horizon. Many Virginians left their exhausted estates and settled in new regions, impressing their institutions upon the new communities in the West, Southwest and South. The war came; society was shaken to its very foundations; Virginia was devastated by the marchings of opposing forces, and when those of her sons, who survived the terrible struggle returned to their homes, they were unsettled by the irregular service of five years, and many had little but their hands and brains, with which to begin life again. They set to work, however, and despite the enervating influences of "reconstruction" from without, and change of their manner of living from within, have again placed the State in the line of progress.

As recuperation of resources began, there were made changes looking to a greater localization of power, and there is now a

form of township or district, whose origin can probably be traced to Pennsylvania influences. But the time has not yet come for the creation of more local forms of government, and it would be unwise to try to hasten it by unnatural means. There are signs, however, of a coming change in administrative methods. The abolition of slavery prepared the way; for by that measure, just or unjust, the foundation was laid for the dignifying of labor, for the division of plantations into small farms, and for the allowance of greater opportunities of development to the various trades, that were once confined to negro quarters. The plantation shoemaker and blacksmith have been compelled to shift for themselves, and the result has been seen not only in an increase of the population of the older towns, which has not always been for the better, but also in the beginnings of new ones. The following approximate statistics will show the increase in the number of towns in the last hundred years and in the past ten years. In 1785 the population of Virginia, which then included Kentucky and West Virginia, was about 570,000, and there were not more than twenty-five towns, of which the largest had never contained over seven thousand inhabitants. In 1875 the population, with an area equal to about one-third of that of 1785, was about 1,340,200, and the number of towns had greatly increased. In 1885 the population is over 1,620,000; there are twenty-five towns containing more than 1,000 inhabitants, a metropolis with 64,000 inhabitants in the eastern part of the State, a flourishing commercial centre in the southeast, manufacturing cities in southside and in the Valley, and in the southwest Roanoke, a town of phenomenal growth and a railroad centre destined to become still greater as a site for manufactures and trade. There are, besides, hundreds of villages, which have sprung up in the past few years, and in many cases the process of their development has been about as follows: around a country store or post-office at some cross-roads, a wheelwright, a smith and a carpenter have settled. The place is discovered to be a convenient rendezvous for the neighboring farmers;

a school house is built, and then perhaps a church. A nucleus of a town is thus formed, and as such settlements can be found in different parts of the State, and as Virginia has many inducements for persons with capital, who desire to engage in manufacturing or agriculture, it will require only time and an extension of improved means of communication for some of the villages to grow into large towns. The existence of a great many towns, however, is not necessary for the exercise of local self government, but rather than that there should be an undue increase in town populations, agriculture, commerce and manufactures should advance together, and thus produce a more equal distribution of population and a thorough development of the State's resources. Local government would then be an absolute necessity, and plans for it could be more readily executed. The existing smaller divisions of the county for school purposes, the care of the poor, the repair of roads, and the administration of justice can be used as the basis for a governmental system similar to the western or the northern township, and as soon as a more general diffusion of a true education among all classes, with a closer association resulting from a larger population, has created the need for such decentralized forms of government, the people of Virginia, unless their purpose shall be balked by the schemes of politicians, who naturally prefer a system which can be controlled for election purposes, will produce all necessary local institutions.

VII.

APPENDIX.

COPY OF THE MS. CHARTER OF NORFOLK BOROUGH.

(INCORPORATED THE FIFTEENTH OF SEPTEMBER, 1736.)

George the Second, by the Grace of God, of Great Britain, France, Ireland, King, Defender of the Faith, &c. To all and singular our Faithful Subjects, Greeting:

WHEREAS, a healthful and pleasant place, commodious for trade and navigation, by act of the General Assembly of our Colony and Dominion of Virginia, hath been appointed and laid out for a town, called by the name of Norfolk; which place of late years, especially during the administration of our trusty and well beloved William Gooch, Esq., our Lieutenant Governor of our said Colony, hath very greatly increased in the number of its inhabitants and buildings, in so much that the said town not being capable of containing all such persons as have resorted thereto, divers of our loving subjects have seated themselves and families upon the adjoining lands so far as to a place called the Town Bridge. *Know ye*, That we being willing to encourage all our good and faithful subjects, as well at present residing and inhabiting, as shall or may hereafter reside and inhabit within the said town of Norfolk and the places thereto adjoining, so far as the Town Bridge, at the instance and petition of divers of our dutiful and loyal subjects, inhabitants of the said town and places adjacent, of our Royal grace, good will, certain knowledge, and mere motion, with the advice of our council of our said Colony, have constituted and erected, and by these our LETTERS PATENT do constitute and erect the said town of Norfolk, and the said parts thereto adjoining so far as the said bridge, A BOROUGH, by the name of the *Borough of Norfolk;* and for us, our heirs and successors do by these presents grant to the inhabitants of the said Borough and of the parts adjacent, that the said Borough and the parts adjacent shall be a Borough Incorporate, consisting of a Mayor, one person learned in law, stiled and bearing the office of Recorder of the said Borough, eight Aldermen, and sixteen other persons to be Common Council Men, of the said Borough; which said Mayor, Recorder, Aldermen, and Common Council Men, shall be a body incorporate, and one community forever, in right and in fact;

and by the name of Mayor, Recorder, Aldermen, and Common Council of the Borough of Norfolk, and as such shall be persons able and capable in law to acquire, purchase, and receive manors, lands, tenements, and hereditaments not exceeding one thousand pounds sterling per annum, and all goods and chattels whatsoever, to *have, hold and enjoy,* to them and their successors forever. And also that they the said Mayor, Recorder, Aldermen, and Common Council, by the same name, plead, and be impleaded, prosecute and defend, answer and be answered in all and singular, causes, complaints, actions real, personal and mixt, of what kind or nature soever, in all courts and places, and before all judges and justices whatsoever, and also that the said Mayor, Recorder, Aldermen and Common Council and their successors shall have one common seal to be used for their causes and business and that it shall be lawfull for them the SAID MAYOR Recorder, Aldermen and Common Council and their successors, their said seal to break, change, and to make anew from time to time as to them shall seem expedient; And we will, and by these presents declare, name, and appoint *Samuel Boush* gent, to be Mayor of the said Borough for the year ensuing and afterwards until the day for electing a Mayor herein-after appointed; and Sir *John Randolph,* Knight, to be Recorder for the said Borough; *George Newton, Samuel Boush,* the younger, *John Hutchins, Robert Tucker, John Taylor, Samuel Smith,* the younger, *James Ivey* and Alexander Campbell, gents, inhabitants of the said Borough to be Aldermen thereof for so long a time as they shall well behave themselves in their respective offices and places; and we do further order and direct, that the said Mayor, Recorder and Aldermen, before they shall enter into or upon the execution of their said offices, shall take the several oaths by law appointed for the security of our person and government, and subscribe the same, and the oath by our said Lieutenant Governor, appointed to be taken by the Mayor, Recorder, and Aldermen of the said Borough, and subscribe the test, which oath shall be administered to them by our said Lieutenant Governor, or by such person or persons as he shall authorise and appoint to administer the same.

And we grant that the said Mayor, Recorder and Aldermen, or the major part of them, shall elect and choose other of the most sufficient inhabitants of the said Borough, being freemen thereof, to be of the Common Council of the said Borough, for so long a time as they shall well behave themselves in their respective places, And to perpetuate the succession of the said Mayor, Recorder, Aldermen and Common Councilmen in all time to come, WE DO GRANT, That for the future they shall assemble in some convenient place in the said Borough, upon the feast day of St. John the Baptist, in every year, and shall elect and choose by the major vote of such of them as shall be then present, one other of the Aldermen of the said Borough, for the time being, to be Mayor of the said Borough for the ensuing year. And upon death, removal, or resignation of the said Mayor, Recorder, or Aldermen, or any of them, or within one month after

such respective death or deaths, removal or removals, resignation or resignations, the rest of the said Aldermen, together with the said Mayor and Recorder, if they should be living, and Common Councilmen, or the major part of them, shall at a time by them to be appointed, meet within the said Borough and elect and nominate some other person or persons to be Mayor, Recorder and Aldermen of the said Borough, in the place and places of such person or persons so deceased or removed as the case shall require, so as the said Mayor so to be elected and nominated be at the time of such election and nomination actually one of the Aldermen of said Borough; and so as the said Recorder so to be elected and nominated be a person learned in the law; and so as the Alderman or Aldermen so elected and nominated at the time of such election and nomination, be actually of the Common Council of the said Borough; and the said Mayor, Recorder, Alderman and Aldermen so elected and nominated, shall at the time and place of election take the several oaths above mentioned, and subscribe the same, and subscribe the test; which oath the said Mayor, Recorder, or anyone of the Aldermen may, and is hereby required to administer; and shall then likewise, or on the said feast of St. John the Baptist, out of, and from among the inhabitants and freeholders of the said Borough, elect and nominate so many persons to be of the Common Council as shall be wanting to make up the full number of sixteen persons, and that the persons hereby appointed and named, or hereafter to be elected and nominated Mayor, Recorder, and Aldermen, be Justices of the Peace within the said Borough, the precincts and liberties thereof, and directors of the buildings and streets in the said Borough; and that they or any three of them, whereof the Mayor or Recorder for the time being shall always be one, shall have within the said Borough and the precincts and liberties thereof, full power and authority to make Constables, Surveyors of Highways, and other necessary Officers; and to rule, order and govern the inhabitants, and the buildings and the streets thereof, as Justices of the Peace, and Directors are or shall be authorised to do, and shall have power, and may execute all the Laws, Ordinances and Statutes in that behalf made, as fully and amply as if they were authorised thereto by express commission, willing and commanding that no other Justices of the Peace or quorum within our said Colony do at any time hereafter take upon them, or any of them, to execute the office of a Justice of the Peace within the said Borough or precinct thereof, in any cause, matter or thing hereby declared to be cognizable by the said Mayor, Recorder and Aldermen, notwithstanding any commission at large authorising them thereunto, saving always the authority and jurisdiction of our Justices of the Peace of our County of Norfolk, nor at any time hereafter to be assigned during the time of their holding their Courts in the said Borough, saving also to all and every other Judges, Justices and Officers, all such rights, powers, Jurisdictions and authorities granted, or which shall be granted to them or any of them by any statute or any act of Assembly of this Colony.

And further, we will grant unto the said Mayor, Recorder, Aldermen and Common Councilmen of the said Borough for the time being, full power and authority to erect work houses, houses of correction, and prisons within the said Borough, and to make, order and appoint such by-laws, rules and ordinances for the regulation and good government of the trade and other matters, exigensies and things, within the said Borough and precincts, as to them or the major part of them shall seem meet, and to be consonant to reason and justice and not contrary but as near as conveniently may be agreeable to the laws, acts of Assembly and statutes now in force; which said by-laws, rules and ordinances shall be observed, kept and performed by all manner of persons trading or residing within the said Borough, under such reasonable pains, penalties and forfeitures as shall be imposed by the said Mayor, Recorder, Aldermen and Common Councilmen, or the major part of them there assembled, from time to time, not exceeding forty shillings, current money of Virginia; which said pains, penalties and forfeitures shall be levied by distress and sale of the goods of the person offending, to be employed for the public benefit of the said Borough at their discretion.

And further, we have given and granted unto the said Mayor, Recorder, Aldermen and Common Councilmen of the said Borough, and to their successors forever, and to all freeholders of the said Borough owning half a lot of land with a house built thereon according to law, and to all persons actually residing and inhabiting in the said Borough having a visible estate of the value of fifty pounds current money, at the least; and all persons who shall hereafter serve five years to any trade within the said Borough and shall after the expiration of their time of service be actually house keepers and inhabitants of said Borough; and for us and our successors, by these presents do give and grant to them full powers and absolute authority to name, elect, and send one Burgess out of the inhabitants actually residing and being within the said Borough; which Burgess elected shall have a freehold or visible estate within said Borough of the value of two hundred pounds sterling; and if such person so elected be not actually residing within the said Borough, then he shall have a freehold or other visible estate of the value of five hundred pounds sterling, to be present, sit and vote in the house of Burgesses of our said Colony of Virginia, and there to do and consent to those things which by the Common Council of our said Colony shall happen to be ordained. And do hereby grant and order that writ or writs of election of a Burgess for the said Borough shall be issued and sent to the said Mayor, Recorder and Aldermen, for the time being, when and so often as a General Assembly shall be called, or occasion shall require:—*Provided always*, That all such electors and voters shall and do, before they be admitted to give their votes at each election, make oath of their freehold, and the value of their personal estate, if the candidates or other electors shall require the same to be done.

And further, we, of our especial grace, certain knowledge and mere motion, for us, our heirs and successors, by these presents give and grant to

the said Mayor, Recorder, Aldermen and Common Council of the said Borough, and to their successors forever, full and free license, power and authority, to have, hold and keep three Markets weekly in some convenient place in the said Borough, to be by them appointed (that is to say) on every Tuesday, on every Thursday, and on every Saturday in the week; and also two Fairs yearly, to be held and kept on the first Monday in October, and on the first Monday in April, in every year, for the sale and vending all manner of cattle, victuals, provisions, goods, wares and merchandise whatsoever, on which Fair days, and on two days next before and on two days next after each of the said Fair days, all persons coming to, or being at the said Fair, together with their cattle, goods and merchandise, shall be exempted and priviledged from all arrests, attachments, or executions, except from toll and process from the Court of Pie-Poudre; and that the said Mayor, Recorder, Aldermen and Common Council, and their successors forever, shall have power to set such reasonable toll on all such cattle, goods, wares and merchandise, and all other commodities, as shall be sold in the said Markets and Fairs respectively, as shall be by them thought reasonable, not exceeding six pence on every beast, and three pence on every hog, and the twentieth part of the value of any other commodity sold therein;—*Provided always*, That the toll to be rated and assessed on the cattle and goods so sold, which shall be belonging to the freeman inhabitants of the said Borough, shall be but one half of the said toll which shall be rated on persons not freemen of the said Borough; and that the said Mayor, Recorder and Aldermen, or any three of them, of which the Mayor, or Recorder shall be one, shall and may hold a Court of Piepoudre, during the time of the said Fairs, for hearing and determining all controversies, suits and quarrels, that may arise and happen therein, according to the usual and legal courses in the like cases in England; and we do, for us and our successors, give and grant to the said Mayor, Recorder, Aldermen and Common Council, and their successors forever, all and every toll, profits and perquisites arising, due and incident from or to the said Markets, Fairs and Courts of Piepoudre, to be and by them, or the major part of them, used, laid out and expended for the benefit and advantages of the said Borough.

And further, we do grant, for us and our successors, that the said Mayor, Recorder and Aldermen, and their successors, or any four or more of them, of which the said Mayor Recorder or the last preceding Mayor or Senior Alderman shall be one, shall hold a Court of Hustings once in every month within the said Borough, of which Court they are hereby empowered to appoint and make Clerks and other proper officers from time to time as there shall be occasion, and to settle and allow reasonable fees, not exceeding the fees now settled and allowed in our County Courts of our said Colony; and shall have jurisdiction and hold plea of trespass and ejectment, and of all writs of dower for any lands and tenements within the said Borough, and all other acts personal and mixed, arising within the said

Borough, precincts and liberties thereof, and as a Court of Record, give judgement and award executions thereon, according to the Laws and Statutes of England, and of the said Colony; *Provided*, the demand in the said action personal and mixed do not exceed twenty pounds, current money, or four thousand pounds of Tobacco.

And provided nevertheless, That any party or parties, plaintiff or defendant, shall be at liberty to appeal from the judgement of the said Court of Hustings to the General Court, or to obtain a Writ of Error, or Supercedeas to such judgement returnable to the said General Court, under such limitations, rules and orders as are already prescribed and set down by the Act of Assembly, or Rules of the said General Court, for obtaining and prosecuting Appeals, Writs of Error, and Supersedeas, from the Judgement of the County Courts to the General Court.

IN WITNESS WHEREOF, we have caused these our letters to be made Patent; witness our trusty and well beloved William Gooch, Esq., our Lieutenant-Governor, and Commander-in-Chief of our said Colony and Dominion of Virginia, at Williamsburg, under the Seal of our said Colony, the fifteenth day of September, one thousand seven hundred and thirty-six, in the tenth year of our reign.

(Signed) WILLIAM GOOCH.

A copy by C. R. C.

BIBLIOGRAPHY.

PRINCIPAL WORKS USED IN THE PREPARATION OF THIS PAPER.

GENERAL.—Stubbs, Constitutional History; E. G. Scott, The Development of Constitutional Liberty; Bancroft, History of the United States, and the standard histories of the colony by Campbell, Burk, Howison, and Cooke.

VIRGINIA AS A WHOLE.—Hening, Virginia Statutes at Large, 13 vols., (1619–1792); Stith, History of Virginia; Wynne, Colonial Records of Virginia (1619–1680); Neill, Virginia Company of London; Neill, The English Colonization of America; Nova Brittania (1609), Force's Tracts, Vol. I.; A True Declaration of the Estate of the Colonie in Virginia (1610), Ibid., Vol. III.; For the Colony in Virginia Brittania, Lawes Diuine, Morall and Martiall, &c. (1612), Ibid; Hamor, A True Discourse of the present estate of Va., &c. (1615); A Declaration of the state of the Colonie and affairs in Virginia (1620), Force's Tracts, Vol. III.; De Vries, Voyages from Holland to America (1639), New York Historical Collections, 2nd Series, Vol. III.; A Perfect Description of Virginia (1649), Mass. Hist. Coll., 2nd Series, Vol. IX.; Palmer, Calendar of Virginia State Papers (1652–1781); Leah and Rachel (1656), Force's

Tracts, Vol. III.; Virginia's Cure (1662), Ibid.; An Account of the present state of Virginia (1698), Mass. Hist. Coll., 1st Series, Vol. V.; Beverly, History of Virginia (1705); Brock, Spotswood Letters, Vol. I., (1710–1712); Jones, Present State of Virginia (1724); Brock, Dinwiddie Letters, 2 vols. (1751–1758); Jefferson, Notes on Virginia, Washington, Jefferson's Works; Southern Literary Messenger (1834–1864); Virginia Historical Reporter, Vol. II., Part I.; Virginia Historical Register, Vols. I.–IV.; Collections of the Virginia Historical and Philosophical Society, Vol. I.; Hotchkiss, Summary of Virginia.

SPECIAL WORKS CONSULTED FOR PARISH, COUNTY AND TOWN GOVERNMENT.—Smith, The Parish; Shaw, Parish Law; Hatch, Organization of the Early Churches (Bampton Lectures); Chalmers, Local Government (Eng. Citizen Series); Meade, Old Churches and Families of Virginia; Perry, Papers relating to the History of the Church in Virginia; Hawks, Contributions to the Ecclesiastical History of the United States; Brock, Vestry-book of Henrico Parish; Slaughter, History of St. Mark's Parish; Neill, Notes on Virginian Colonial Clergy; Maury, Memoirs of a Huguenot Family; Slaughter, Memoir of Hon. William Green, &c.; Virginia Gazette, Feb. 28–Nov. 14, 1755, Jan., 1776–Dec., 1777; Byrd, History of the Dividing Line, &c.; Kercheval, History of the Valley; Peyton, History of Augusta County; The Aspinwall Papers, Mass. Hist. Coll., 4th Series, Vol. IX.; New York Historical Collections, 1st, 2nd and 3rd Series; Burton, History of Norfolk; Forrest, Historical and Descriptive Sketches of Norfolk; Mordecai, Richmond in By Gone Days; Howe, Historical Collections, &c.